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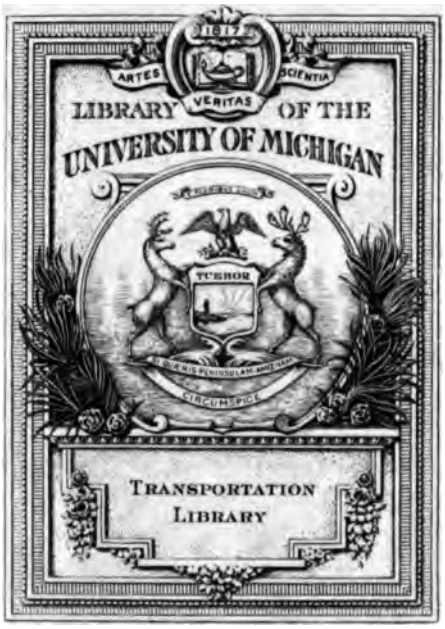
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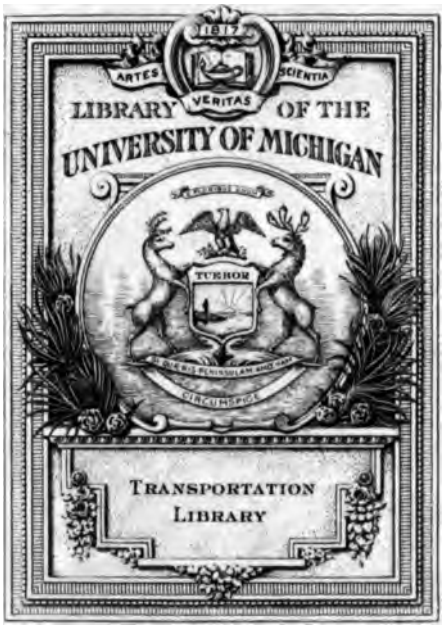
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Interstate Commerce Commission.

HON. THOMAS M. COOLEY, OF MICHIGAN, *Chairman.*
HON. WILLIAM R. MORRISON, OF ILLINOIS.
HON. WALTER L. BRAGG, OF ALABAMA.
HON. WHEELOCK G. VEAZEY, OF VERMONT.
HON. MARTIN A. KNAPP, OF NEW YORK.

LEHMANN, HIGGINSON & COMPANY *v.* THE SOUTHERN PACIFIC COMPANY, THE TEXAS & PACIFIC RAILWAY COMPANY, THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, AND H. C. CROSS AND GEORGE A. EDDY, RECEIVERS OF SAID COMPANY.

LEHMANN, HIGGINSON & COMPANY *v.* THE SOUTHERN PACIFIC COMPANY, THE ATLANTIC & PACIFIC RAILROAD COMPANY, AND THE ATCHISON, TOPEKA & SANTA FÈ RAILROAD COMPANY.

LEHMANN, HIGGINSON & COMPANY *v.* THE CENTRAL PACIFIC RAILROAD COMPANY, THE SOUTHERN PACIFIC COMPANY, LESSEE OF THE CENTRAL PACIFIC RAILROAD, THE UNION PACIFIC RAILWAY COMPANY, THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, AND H. C. CROSS AND GEORGE A. EDDY, RECEIVERS OF SAID COMPANY.

Complaints filed June 17, 1889. Answers filed July 9 to August 24, 1889. Heard at Kansas City, Mo., September 24 and 25, 1889. Briefs December 6, 1889, to March 19, 1890. Decided May 22, 1890.

A lower charge for a longer distance for transportation of like traffic may be justified by actual water competition of controlling force, relating to traffic important in amount; and among the circumstances and conditions that may be considered in estimating the dissimilarity created by water competition are the character of the roads, the character of the traffic, the preponderance of empty cars moving in a direction in which the traffic must be taken, and the legitimacy of the competition by the rail carrier.

The transportation of traffic under circumstances and conditions that force a low rate for its carriage or an abandonment of the business, but which affords some revenue above the cost of its movement, and works no material injustice to other patrons of a carrier, is to be

deemed legitimate competition. When, however, its carriage is at a loss, and imposes a burden on like traffic at other points, and on other traffic, it is to be deemed destructive and illegitimate competition.

Rates can not be arbitrarily charged in the mere discretion of a carrier. They are to be equitably adjusted with regard to the public interests as well as the carrier's. Reduced rates at points where competitive influences are controlling must not fall below some revenue from the traffic in excess of cost, and higher rates at other points, required for the necessary revenue of a carrier, must be reasonable in themselves, and also relatively reasonable in comparison with the competitive rate.

The general rule contemplated by the statute of equitably graduated charges on like traffic with reasonable reference to the amount of the service, is just in itself, and commonly most beneficial both to the carriers and to the public, and is only to be departed from when justified by exceptional conditions, and in such instances no longer than the conditions require.

Where a reduced rate is made at the terminus of a through route, under the compulsion of competition, a town not located on the line of the through route, but reached over a lateral connecting road, has a disadvantage of situation entailing some additional expense, and a reasonably higher rate to such town than the forced competitive rate to the more distant terminus of the through route, is not unjust discrimination.

Upon complaint by dealers at Humboldt, Kansas, against the respondent lines for unjust discrimination in charging a rate of 65 cents per hundred pounds on sugar transported from San Francisco to Kansas City, and 85 cents per hundred pounds upon the same commodity from San Francisco to Humboldt, more than a hundred miles shorter distance, but not on the through line.

Held, that the reduced rate to Kansas City being forced upon the carriers by competitive conditions beyond their control, and the rate to Humboldt not being unreasonable in itself, but lower than it would be except for the influence of the competitive conditions at Kansas City, and it not appearing that substantial injustice results from the higher rate at Humboldt, the lower rate to Kansas City and the higher rate to Humboldt are not deemed to be in contravention of the statute.

E. A. Barber and *H. C. Sluss*, for complainants.
C. H. Tweed and *J. C. Martin*, for Southern Pacific Co.
Warner, Dean & Hagerman, for receivers of Missouri, Kansas & Texas Railway Co.

John S. Blair, R. S. Lovett and *Robert Adams*, for Texas & Pacific Railway Co.

Britton & Gray, for Atchison, Topeka & Santa Fe. R. R. Co. and Atlantic & Pacific R. R. Co.

John S. Blair and *W. R. Kelly*, for Union Pacific Railway Co.

REPORT AND OPINION OF THE COMMISSION.

SCHOONMAKER, *Commissioner:*

The three above-entitled cases involve the same general questions, and for convenience were heard together, to be considered and disposed of at the same time.

The complainants, Lehmann, Higginson & Company, are wholesale grocers engaged in business at Humboldt, in the State of Kansas. The city of Humboldt is located 118 miles south, and slightly west, of Kansas City, on the Junction City branch of the Missouri, Kansas & Texas Railway, and 35 miles north of Parsons.

In the first-entitled case complaint is made that the respondents, the Southern Pacific Company, the Texas & Pacific Railway Company, and the Missouri, Kansas & Texas Railway Company, and the Receivers of the latter Company, under arrangements among themselves operate a continuous line of railroad from the city of San Francisco, Cal., to the city of Humboldt, in Kansas; that the respondents named contracted to carry, and did carry, freight consisting of sugar in car-loads, from San Francisco to Missouri river points, of which Kansas City is the nearest and St. Joseph the farthest, at the rate of 65 cents per hundred pounds; that in the month of May, 1889, the complainants bought in San Francisco six car-loads of sugar, to be transported from that city to the city of Humboldt, Kans., over the lines of railway owned and operated by the respondents; that the respondents refused to accept and transport the said freight to Humboldt, Kans., although the city was directly upon the route over which the freight must go to reach Kansas City, for less than 85 cents per hundred pounds, which rate is arrived at by charging for

carrying the freight to the Missouri river 65 cents per hundred pounds, *plus* the local rate of 20 cents per hundred pounds back to Humboldt, thereby making a discrimination against the complainants of 20 cents per hundred pounds, which, upon the sugar so bought and shipped, amounted to $303.

The prayer of the petition is, in substance, that the respondents should be required to accept and transport sugar to the complainants at Humboldt, Kans., at the same rate for which similar freight is transported to Missouri river points, and to refund to the complainants the alleged overcharge of $303.

In the second case complaint is made that the respondents, The Southern Pacific Company, the Atlantic & Pacific Railroad Company, and the Atchison, Topeka & Santa Fe Railroad Company, operate a through line of railroad from the city of San Francisco, Cal., to Humboldt, in Kansas; that in the year 1888 the complainants bought ten car-loads of sugar in San Francisco and had the same shipped to themselves over the said lines of road; that the sugar was received by the Atchison, Topeka & Santa Fe Company at Albuquerque, N. M., and hauled from that point by the way of Ottawa, Kansas, to Humboldt, Kans.; that Ottawa is 55 or 60 miles southwest of Kansas City, and 60 miles north of Humboldt, on the Southern Kansas division of the line of road operated by the Atchison, Topeka & Santa Fe Railroad Company; that the said ten car-loads of sugar were billed and hauled as stated; that the price charged for the same was 65 cents per hundred pounds to the Missouri river, and the local rate of 20 cents per hundred pounds from the Missouri river to the city of Humboldt; and that the sugar was not in fact hauled to the Missouri river, but was taken direct to Humboldt by way of Ottawa; that the distance from Ottawa to Humboldt is no greater than the distance from Ottawa to Kansas City; that the respondents refused to accept or transport the said sugar to Humboldt for less than 85 cents per hundred pounds, which amount was arrived at by adding the local rate from Kansas City to Humboldt, of 20 cents per hundred pounds, and the complainants charge that thereby a discrimination was made against them of 20 cents per hundred

pounds, which, upon the quantity of sugar so bought and shipped, amounted to $500.

The prayer in this case is also, in substance, that the respondents be required to accept and transport freight to Humboldt from San Francisco at the same rate for which it is transported to Kansas City and other Missouri river points, and also to refund the overcharge.

In the third case the complaint is that the respondents, the Central Pacific Railroad Company, the Southern Pacific Company, lessee of the Central Pacific Railroad, the Union Pacific Railway Company, and the Missouri, Kansas & Texas Railway Company, and the Receivers of the latter company, operate a through line between San Francisco, Cal., and Humboldt, Kans.; that Junction City is a point on the Union Pacific Railway 150 miles west of Kansas City, and is also the terminal point of the Junction City branch of the Missouri, Kansas & Texas Railway, and 125 miles northwest of Humboldt, Kans.; that in the year 1889 the complainants bought one car-load of sugar in San Francisco, and the same was shipped over the lines of the respondent railways, and came, or should have come, over the Missouri, Kansas & Texas Railway from Junction City; that the respondent railway companies refused to receive and transport such freight to Humboldt for less than 85 cents per hundred pounds, arrived at by charging the rate to Kansas City of 65 cents per hundred pounds, and the local rate from Kansas City to Humboldt of 20 cents per hundred pounds; that the distance from Junction City to Humboldt is less than the distance from Junction City to Kansas City.

The complainants also charge the same discrimination in this case as in the others, and also ask that the respondents may be required to accept and transport freight directly to Humboldt at the same rate that is charged to Kansas City and other Missouri river points, and to refund to the petitioners an overcharge of $50.

The several respondent railway companies answered the complaints separately, but it is not material to set forth their answers in detail. The facts of the several shipments of

sugar set forth in the complaints, and the rates charged for their transportation, are not denied.

The Southern Pacific Company the initial carrier from San Francisco, answers that it billed the sugar through from San Francisco to Kansas City in order to give the consignee the low rate of 65 cents per hundred pounds, being the rate in effect at the time, and that it received as its proportion of the through rate in each case as follows: In the first case, a rate of 36 cents per hundred pounds, San Francisco to El Paso, Texas; in the second case, a rate of 15.83 cents per hundred pounds, San Francisco to Mojave; in the third case, a rate of 32.6 per hundred pounds, San Francisco to Ogden, and collected such charges from the receiving road in each case; and that it did not charge or collect more than its proportion of the Kansas City rates.

The answers of the other respondents generally set forth that Humboldt, Kansas, is not an intermediate point on their respective lines, consequently is not entitled to lower rates than those which have been applied; that it is reached only by the use of separate lines from a junction or terminal station on the lines of the respective respondents, and that such separate lines are justly entitled to their local charge from such junction or terminal stations, and that the respondents have no interest in and receive no benefit from the local charge of such separate lines.

The answers also set forth that the low rates between San Francisco and Kansas City and other Missouri river points are forced upon them by the competition of sailing vessels between San Francisco and New York; that if the railway companies did not make the low rates between San Francisco and the Missouri river the sugar would be shipped in sailing vessels *via* Cape Horn to New York, and distributed in the Mississippi and Missouri river valleys, instead of being refined at San Francisco and distributed thence by or *via* lines operated by the respondents to the same points; that the circumstances and conditions covering the shipment of sugar to Humboldt, Kan., are substantially dissimilar to the circumstances and conditions covering the shipment of sugar from San Francisco to Kansas City, in that the aforesaid

competition is greater and more serious at Kansas City than at Humboldt; that the respondents receive the full benefit of lower rates to Kansas City, and that the additional charge to Humboldt above the charge to Kansas City is justified by the difference in circumstances and conditions affecting Kansas City and Humboldt respectively.

The material facts found in this case are as follows:

The shipments of the car-loads of sugar in the first case were over the following lines and for the following distances: The Southern Pacific Company, San Francisco to El Paso, Tex., 1,286 miles; the Texas & Pacific Railway to Fort Worth, Tex., 616 miles; the Missouri, Kansas & Texas Railway to Nevada, Mo., 439 miles; the Missouri Pacific Railway to Kansas City, Mo., 93 miles; the Missouri Pacific Railway to Moody, Kan., about 110 miles; the Missouri, Kansas & Texas Railway to Humboldt, Kansas, about 24 miles; total distance, 2,568 miles.

The shipment over this route from the nearest junction point to Humboldt would make a total distance of 2,307 miles.

In the second case the route and distances are as follows: The Southern Pacific Company, San Francisco to Mojave, Cal., 382 miles; the Atlantic & Pacific Railroad to Albuquerque, N. M., 815 miles; the Atchison, Topeka & Santa Fe Railroad to Kansas City, or Argentine Transfer Station, near Kansas City, 919 miles; the Atchison, Topeka & Santa Fe Railroad, Southern Kansas division, from Kansas City, *via* Ottawa, to Humboldt, 118 miles; total distance, 2,234 miles.

The shipment direct to Humboldt from nearest junction point on this route would be 2,118 miles.

In the third case the route and distances are as follows: The Southern Pacific Company, San Francisco to Ogden, 895 miles; the Union Pacific Railway to Kansas City, 1,261 miles; the Missouri Pacific Railway to Moody, Kan., 110 miles; the Missouri, Kansas & Texas Railway to Humboldt, about 24 miles; total distance, 2,290 miles.

The direct shipment to Humboldt from nearest junction point on this route would be 2,137 miles.

The rate by all these routes from San Francisco to Kansas

City is the same, being 65 cents per hundred pounds, and is also the same from San Francisco to Humboldt, being 85 cents per hundred pounds, made by a combination of the through rate from San Francisco to Kansas City and the local of 20 cents per hundred pounds to Humboldt. The rates by the direct routes from San Francisco to Humboldt, consisting of the through rate to the junction point nearest to Humboldt on the through line, added to the local rate in force from the junction point to Humboldt, would be higher than the combination of the through rate to Kansas City with the local added from that point.

In some instances the local rate on shipments from Humboldt to another place, added to the rate to Humboldt is shown to be five cents per hundred pounds in excess of the direct local rate from the Missouri river to the same place, added to the through Missouri river rate, giving in such cases apparently an advantage to dealers at Kansas City. This is claimed to be, and to some extent is, counterbalanced by quicker delivery to customers from Humboldt, and lower expenses for carrying on business at Humboldt than at Kansas City.

Complainants sell sugar within a radius of fifty miles of Humboldt. The limits of the trading territory of the complainants are 100 miles north of Humboldt, 50 miles south, 25 miles east and 80 to 90 miles west. Complainants have competitors at Emporia, Topeka, Wichita and Fort Scott, but their principal competitors are at Missouri river points, St. Joseph, Atchison, Leavenworth and Kansas City.

The quantity of sugar consumed annually in the United States is nearly 1,200,000 tons. The sugar carried eastward from San Francisco by the respondents is produced in the Hawaiian and Philippine Islands, and a small proportion, about 2,000 tons, in Central America. It is imported in a raw state to San Francisco, and there refined. The importation at San Francisco amounts to about 140,000 tons annually; about 65,000 tons find market on the Pacific slope. A small part of the remaining 75,000 tons is exported, but the bulk goes to the Missouri river and that territory.

There are two refineries in San Francisco in active opera-

tion, the California and the American; they each refine about 5,000 barrels per day. The refining of sugar on the Pacific coast began about seven years ago, and about six million dollars are invested in plants for that purpose. The importation and the amount refined have constantly increased during that time, but no corresponding reduction in price has followed.

Under treaty stipulations there is no duty on raw sugar brought to San Francisco from the Sandwich Islands; refined sugar does not come in free of duty. The period of sugar harvest in the Islands is from January to July.

The sugar taken east from San Francisco is mostly granulated. The price of granulated sugar at San Francisco is usually lower than the same grade of sugar at the Atlantic seaboard. Sugar from New Orleans costs at times 13 cents less per hundred pounds on the Missouri river than sugar from San Francisco.

The quantity of sugar that goes from San Francisco to Missouri river points is estimated to be as follows: About fifteen to sixteen thousand barrels per month to Kansas City, thirteen to fourteen thousand barrels per month to St. Joseph, and the remainder to the other points, such as Omaha, Leavenworth and Atchison. The Missouri river valley, or the territory that is regarded as tributary to the Missouri river points, is the region west of the Missouri river to the Nebraska and Kansas State lines, and in Dakota and Wyoming east of the Rocky mountains where the water flows east, and east of the Missouri river to a distance of eighty to one hundred miles. Sioux City is regarded as a Missouri river point.

The Missouri river common points draw their sugar supply from Louisiana, New York, Boston, Philadelphia, and San Francisco since shipments began from that point. The competition from the different points from which the supply is received has reduced the price on the Missouri river. Competition exists among all the wholesale dealers at the various distributing points in the Missouri river territory. Atchison, Leavenworth and St. Joseph are competitive for the Kansas trade with Kansas City; in southern Nebraska the

Kansas City competitors are Omaha, Nebraska City and Atchison; in the eastern and southeastern portions of Missouri, Kansas City largely supplies the trade. In those sections St. Louis and Chicago are the competitors. Testimony tended to show that an advance of the sugar rate from San Francisco to the Missouri river of ten or even five cents per hundred pounds would result in sending the raw sugar by ship from the Sandwich Islands to New York and other Atlantic coast points to be refined there. And that any material advance above the 65 cent rate on sugar would stop the traffic from San Francisco to the Missouri river.

One reason why a low rate on sugar can be made from San Francisco to the Missouri river is the great number of empty cars that would otherwise be hauled east. All the lines have a large number of east-bound empty cars. The proportions of west-bound and east-bound traffic are about sixty per cent. west-bound and forty per cent. east-bound. On the Atchison line, of the empty cars going east about ninety-nine per cent. seek the Missouri river. The sugar traffic is about sixteen to twenty per cent. of the east-bound tonnage of the roads.

A maximum rate for a considerable distance prevails on the different lines, the increase from San Francisco being gradual until the maximum is reached, and the decrease also gradual until the minimum is reached at the Missouri river. On the line of the Atchison, Topeka & Santa Fe road the maximum is reached at Dodge City, and is $1.10 per hundred pounds. On that line the shipments from San Francisco to intermediate points that take the combination rates from the Missouri river do not exceed five per cent. of the total. On the route of which the Union Pacific road forms a part the maximum rate applies from Reno, Nev., and on the Union Pacific proper extends from Ogden, Utah, to Victoria, Kan., and is $1 per hundred pounds.

The practice of the lines has been to show on their tariffs only the through rate from San Francisco to the Missouri river, and the locals from the latter points, and not to show the rates from San Francisco to the intermediate points. New tariffs have since the hearing been issued that show

both the through rates and the rates to intermediate points. The proportion of shipments from San Francisco to intermediate points on the Union Pacific line, exclusive of Cheyenne and Denver, is about twenty-five per cent. of the total carriage.

The rate per ton per mile on sugar on the Atchison line from the Pacific coast to the Missouri river is about six and a half mills, and the 85 cent rate to Humboldt gives about eight and a half mills per ton per mile. These rates are less than the average gross earnings per ton per mile on that line in 1888, when it was a fraction over one and a quarter cents per ton per mile. The operating expenses were eighty-four hundredths of a cent per ton per mile The gross amount of fixed charges on this system is $4,968,773. Taking into account all the traffic east of the Rocky mountains, the proportion of the traffic to points west of the Missouri river would be about one-third of the whole. If the combination method of making rates based on the Missouri river were not allowed, the carriers claim they would be obliged to advance the Missouri river rates in order to protect the revenues of their lines. Evidence was given to the effect that it costs from thirty to forty per cent. more to haul a train of loaded cars than a train of empty cars of the same size. The question of empty cars does not affect interior points as much as Missouri river points, for the reason that the cars have to go to the Missouri river to be loaded with goods. To some of the intermediate points reached by roads leading from the direct lines the grades are heavier, and more cars can be hauled by the same engine to the Missouri river than to most of the intermediate points not on the main line. Cars taken to Humboldt and some other intermediate points to be unloaded have to be hauled empty to the Missouri river to be loaded and go west again. This deflection of cars from the main line to be unloaded at intermediate points and then hauled empty to the Missouri river adds fo some extent to the cost of the service in reaching such points.

There are some exceptions to the rule of charging on sugar from the East the rate to Kansas City plus the local rate to

points west of Kansas City; in southeastern Kansas the rates are based on the rates to St. Louis plus the local to destination. Humboldt is one of these, and Fort Scott, Chanute, Independence, Iola, Garnett and Ottawa are others.

The rate on sugar from San Francisco to the Missouri river is a commodity rate. Carriers claim that it is not a reasonable and just rate to them, but that it is all they can get, and that if they charge more sailing vessels will get the traffic. The Southern Pacific road is the initial carrier, and its proportion of the 65 cent rate is about six mills per ton per mile, which is estimated to give about two mills per ton per mile above the cost of the service. This road carried in 1888 about 30,000 tons of sugar routed to the Missouri river, and about 15,000 tons went to Arizona and New Mexico to local points. The shipments of traffic to all intermcdiate points on this line are about equal in volume to the shipments for the Missouri river. The charges to intermediate points by this line are nearly all maximums, and are $1 per hundred pounds. The maximum is reached at Reno, Nevada, and continues on beyond Denver and includes all larger towns. The rates from the Missouri river to Denver have been greatly reduced within the last three years. There was a period before the law when the rate on sugar to the Missouri river was 50 cents per hundred pounds; at that time the rates to intermediate points were much higher. On the Southern Pacific proper direct rates are given to intermediate points on the tariff sheets.

On the Union Pacific line the average rate per ton per mile received in 1886 was 1.359 cents; in 1887, 1.276; in 1888, 1.173; not including company freight. On Pacific coast business the average rates received were: In 1886, .584 cents; in 1887, .773; in 1888, .925. On east-bound Pacific coast business these averages were: In 1886, .63; in 1887, .81; and in 1888, .85. On west-bound Pacific coast business they were: In 1886, .55; in 1887, .74; and in 1888, .98. The ratio of operating expenses of this company (exclusive of fixed charges) during the same years, to the gross earnings, was as follows: In 1886, 57.75 per cent.; in 1887, 53.38; and in 1888, 55.84. Estimating the approximate cost of Pacific coast

business at the same ratio as found for the cost on the entire business of the Union Pacific Company, the cost of moving sugar in 1888 was about .475 cents per ton per mile. At the 65 cent rate this company receives on sugar to Kansas City a little over .51 cents per ton per mile, leaving a profit above the estimated cost of nearly .4 of a mill per ton per mile, equivalent to about $6 per car of twelve tons.

The complainants purchase granulated sugar exclusively in San Francisco, except sometimes small quantities in New Orleans. The sugars they purchase at New Orleans and at Philadelphia, New York, and Boston are nearly all yellows. Of the sugar brought to Missouri river points about forty to forty-five per cent. comes from the Pacific coast, and about fifty-five to sixty per cent. from the Atlantic coast and the Gulf. The total competition of California sugar on the Missouri river was stated to be from two hundred to two hundred and fifty thousand barrels.

The water competition in the carriage of sugar from San Francisco by way of Cape Horn was shown to be as follows: In 1888 one firm chartered four vessels carrying raw sugar from San Francisco to New York for $4.00, $3.78 and $3.87 a ton. Vessels have been chartered as low as $3.75 a ton on sugar to New York. These rates might be obtained from January to July. Sugar is packed in bags when it goes by water, and requires an average of one hundred and ten days to go from San Francisco to New York. Other evidence showed that four vessels were chartered in 1887 and three in 1888 for this traffic. These charters were at $4.00 a ton for one vessel and $3.75 for the others. This is about 20 cents per hundred pounds. No raw sugar is sent at the present time for refining at the East. In 1888 from three to five vessels of three thousand tons each were chartered, amounting from ten to twelve per cent. of the importation for 1888. Sugars carried by sailing vessels from San Francisco to New York are generally damaged from five to ten per cent. A quantity of 50,000 tons shipped in that way was damaged to that extent. There are no schedule rates for the carriage of sugar by sail, the charge being regulated by the supply and demand.

The character of the combination rates to intermediate points, based on the standard rate of 65 cents from San Francisco to Kansas City, plus the local rate back to intermediate points, is shown by the following tables.

On the line of the Union Pacific Railway they are as follows:

To—	June 17, 1889.	April 1, 1890.	Distance from Kans. City.	Distance from San Francisco
	Cts.	Cts.	Miles.	Miles.
Muncy, Kan.	70	70	9	2,147
Loring, "	71	71	20	2,136
Lawrence,"	74	72	39	2,117
Williamstown, Kan.	75	75	48	2,108
Newman, "	75	75	55	2,101
Topeka, "	77	77	67	2,089
Silver Lake, "	77	77	78	2,078
Rossville, "	79	79	83	2,073

At the time of the hearing there was no tariff in effect showing the through rates from San Francisco to the above points, but a tariff showing such rates was issued October 27, 1889. These combination rates extend westward, as far as Rossville, Kan., 83 miles from Kansas City. Lawrence, Kan., is given a rate two cents less per hundred pounds than the combination to that point. West of Rossville the rates are all lower than the combination on Kansas City. The highest rate to points on the Kansas division is one dollar per hundred pounds, and applies to all stations from Victoria, Kan., to Denver, Colo.

On the line of the Atchison, Topeka & Santa Fe Railroad combination rates are as follows:

To—	June 17, 1889.	April 1, 1890.	Distance from Kans. City	Distance from San Francisco
	Cts.	Cts.	Miles.	Miles.
Holliday, Kan.	70	70	14	2,102
Lawrence, "	74	72	41	2,075
Topeka, "	77	77	67	2,049
Burlingame, "	85	85	93	2,023
Emporia, "	89	89	128	1,988
Florence, "	98	98	173	1,943
Newton, "	101	101	201	1,915
Hutchinson, "	106	106	235	1,881
Larned, "	110	110	308	1,808

On this line a tariff was issued November 5, 1889, showing through rates from San Francisco to the points named. The combination rates extend westward from Kansas City to Larned, Mo., 308 miles. West of Larned, to Lamar, Colo., 519 miles from Kansas City and 1,597 miles from San Francisco, the maximum rate is $1.10 per hundred pounds.

A new local tariff from Kansas City was issued January 10, 1889, which makes lower rates to a few of the points named in the above table than those shown in the present sugar tariff. The effect of the new tariff upon the figures shown in the table reduces the rate to Burlingame to 84 cents, to Florence 92½ cents, to Newton 96 cents, to Hutchinson $1.01, and to Larned $1.05.

No tariffs are on file showing through rates on sugar from San Francisco to local stations on the Missouri Pacific Railway, or on the Missouri, Kansas & Texas Railway. The tariff issued by the Southern Pacific Company December 21, 1889, shows rates on sugar to Weatherford, Tex., and other points on the Texas & Pacific Railway east of that point, at $1.10 per hundred pounds.

The rates on sugar in car-loads from Atlantic seaboard cities to Missouri river points, in June, 1889, and April, 1890 were as follows:

From—	June 17, 1889.	April 1, 1890.	Short Line to Kansas City, *via* Chicago.
	Cts.	Cts.	Miles.
Boston	54	47	1,489
New York	49	42	1,400
Philadelphia	47	40	1,310

These rates apply *via* all the direct lines from the East, and somewhat lower rates are charged by the routes allowed differentials.

Rates *via* these lines to points east of the Missouri river are not made from the eastern cities by the combination of the rates to the Missouri river plus the locals back, but are made by adding to the rates to the Mississippi river the local rate beyond.

The through rates to the points on the Union Pacific Railway from eastern cities, made up of the rate to Kansas City

with the local rate west from Kansas City to the points that take combination rates from San Francisco, are as follows:

To—	From— Boston. June 17, '89.	Boston. April 1, '90.	New York. June 17, '89.	New York. April 1, '90.	Philadelphia. June 17, '89.	Philadelphia. April 1, '90.
	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.
Muncy, Kan.	59	52	54	47	52	45
Loring, "	60	53	55	48	53	46
Lawrence, "	63	56	58	51	56	49
Williamstown, Kan.	64	57	59	52	57	50
Newman, "	64	57	59	52	57	50
Topeka, "	66	59	61	54	59	52
Silver Lake, "	66	59	61	54	59	52
Rossville, "	68	61	63	56	61	54

The through rates from the same eastern cities, made up in the same way, to points on the line of the Atchison, Topeka & Santa Fe Railroad that take combination rates from San Francisco, are as follows:

To—	From— Boston. June 17, '89.	Boston. April 1, '90.	New York. June 17, '89.	New York. April 1, '90.	Philadelphia. June 17 '89.	Philadelphia. April 1, '90.
	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.
Holliday, Kan.	59	52	54	47	52	45
Lawrence, "	63	54	58	49	56	47
Topeka, "	66	59	61	54	59	52
Burlingame, "	74	66	69	61	67	59
Emporia, "	78	71	73	66	71	64
Florence, "	87	74½	82	69½	80	67½
Newton, "	90	78	85	73	83	71
Hutchinson, "	95	83	90	78	88	76
Larned, "	99	87	94	82	92	80

CONCLUSIONS.

The principal question that arises upon the facts is whether the lower rate on sugar from San Francisco to the Missouri river than to Humboldt and other intermediate towns not on the through route, but to which the most direct haul over a connecting route is shorter than to the Missouri river, is unjust discrimination within the purview of the statute, against such intermediate points. Another question raised by the

complainants is that through routes and rates extending over the latteral roads should be made by the respective lines from San Francisco to Humboldt, and that such through rates should not exceed the Missouri river rate. This, however, is only incidental to the main question. It involves, nevertheless, another question, and that is the authority of the Commission to require carriers to enter into arrangements for through routes and through rates when not done voluntarily, and the Commission has ruled that this power has not been conferred by the Act. The point need not, therefore, be further discussed. Little Rock & Memphis R. Co., *v.* East Tennessee, Virginia and Georgia R. Co. *et al*, 3 I. C. C. Rep. 1; Mattingly *v.* Pennsylvania Co., 3 I. C. C. Rep. 592.

The question of unjust discrimination is therefore the one to be determined. This would be of easy solution if distance were the only element involved. The greater charge for the shorter distance, if included in the longer haul, over the same line and in the same direction, and under substantially similar conditions, would be clearly unlawful, not only because it is prohibited by the fourth section of the Act, but because it is in itself unjust discrimination. But the issues involve other considerations, and respondents claim to justify the lower charge for the longer distance, within the principles of the Act, on the general ground of dissimilarity in the circumstances and conditions of the transportation to the Missouri river.

On the part of the complainants the case is put entirely on the ground of distance and consequent cost of service in conveying the sugar to its destination. It is said that it costs no more to haul the sugar to Humboldt, though not on the main line, than to Kansas City, but presumably less on account of shorter distance, and therefore Humboldt should have no higher rate, but, if any difference be made, should have a lower rate. If all the other circumstances and conditions were substantially similar this principle would apply. But the Commission has never understood that milage or cost of service alone, regardless of other conditions, should be the controlling factors in determining the lawfulness of rates, and has repeatedly so declared. In fact, an inflexible

rule of that kind would be disastrous to the transportation business of the country, and the public would be injured more than the railroads. It is because of the widely varying conditions that were known to exist that the statute with great propriety, has allowed carriers to adjust their charges to the forces that are compulsory upon them, within such limitations as shall not work injustice.

The respondents insist that they are strictly within these principles of the statute, and that no injustice is done by the established rates to the complainants and others similarly situated.

The principal question, therefore, is whether, upon the facts in these cases, the carriers may lawfully make a lower charge for the longer distance to the Missouri river than to an intermediate point situated like Humboldt. The burden rests upon the carriers to show that they fall within the exceptions founded upon dissimilarity of conditions, and that the rates challenged are justified by those conditions. The conditions that may be shown in justification have been indicated in former cases. *In re* Louisville & Nashville R. Co., 1 I. C. C. Rep., 31. They may be water competition, or competition by foreign, or other railroads not subject to the statute, or rare and peculiar cases of competition where a strict enforcement of the statute would be destructive of legitimate competition. Any one of these conditions may sometimes be found sufficient, and all may to some extent co-exist, and together be found sufficient. In these cases there are considerations pertaining to different classes of these conditions.

The circumstances and conditions peculiar to a road determine the amount of revenue required for its maintenance and operation. Circumstances and conditions extraneous to a road may determine independently of its own volition the rates it must accept upon some of its traffic, or to secure business at some points. The dissimilarity mentioned in the statute may be created by such conditions. The statute does not define the nature of the dissimilarity that may authorize a deviation from the general rule that distance should be a governing element in rates. Evidently it should be of such a nature as practically to fix the rates a carrier may charge

in order to participate in business useful to the public without essential injustice to other public interests. The conditions that may be sufficient for this purpose may differ in different cases, and cannot all be foreseen, nor definitely specified for every case. They depend on facts to be shown by evidence, and the question of their sufficiency is to be determined as occasion may arise.

The first consideration bearing upon this question is the character of the roads over which the traffic moves. This involves the cost of their construction, maintenance and operation, and the right to fair remuneration for their service. The continuous routes made up of the various roads over which through rates are made are of extraordinary length, being respectively 2,434 miles, and 2,116 miles, and 2,156 miles, in the different cases. They cross mountain ranges of great elevation, reaching six and eight thousand feet in some instances, creating necessarily extremely heavy grades. Their construction was exceedingly expensive, both on account of the character of the country for the most part through which they run, and the long transportation of necessary materials. The obstructions to operation by various causes, such as snow blockades and wash-outs of tracks, are often serious. These causes, together with the high cost of fuel on most of the roads and the large number of trackmen required, make the expenses of operating alone exceptionally great, and the necessity for corresponding revenue imperative. The long distances of almost uninhabited territory, where there is no local business, is also a feature of these lines connected with the circumstances and conditions of their business.

These roads are national in their character, and are more important to the country at large than to their immediate owners. The large subsidies granted by the government towards the construction of many of them is evidence of the importance with which they are regarded in a national sense. For all the purposes, governmental, commercial and individual, for which great highways connecting all the portions of an immense country by easy and rapid means of communication, are valuable, these roads are of incalculable importance. They have served to develop with amazing rapidity great

areas of country that were trackless wastes, to extend civilization and industrial pursuits where only savages had wandered, and have made markets possible for numerous products that otherwise would scarcely have commercial value.

These considerations are inseparable from any fair examination of the circumstances and conditions that apply to these lines. They furnish no reasons for violating the law, but, as features of the roads, may be regarded in connection with dissimilarities in transportation that may affect rates.

Another consideration is the character of the traffic. Obviously the only traffic that can furnish business to these lines is that which can bear the necessary charges for such long distance transportation. Merchandise that will yield no commercial profit after paying the cost of carriage will not be offered for transportation. This is one of the laws of trade. Sugar is one of the articles that can be transported with some profit both to the carrier and to the dealer. The margin may be small in both instances, but so long as some profit accrues the governing principle of business is not violated. According to the evidence sugar furnishes from sixteen to twenty per cent. of the tonnage to the Missouri river. It is therefore an important part of the traffic, which the lines cannot afford to lose. they all have capacity for a vastly greater amount of traffic than they carry. Adequate business to make the investments profitable and to materially modify the conditions of transportation is doubtless probable in the future. At present the means of transportation are in excess of the traffic. In the meantime the expenses of the maintenance and operation of the roads and their fixed charges must be met from the proceeds of their business. Their sugar business contributes materially to this result, and a considerable interest on the part of the public in the traffic is shown by the large amount consumed in the territory served. The necessity for the traffic furnished by this commodity is therefore a circumstance entering into the general question.

Nearly related to the character of the traffic is the further consideration of empty cars that return east from the Pacific coast. The evidence shows that the transportation westbound over these lines is considerably greater than the east-

bound transportation, being in the proportions of sixty west-bound to forty east-bound. There is, therefore, a large preponderance of east-bound empty cars that earn no revenue. If sugar should not be carried to the Missouri river the proportion would be still greater. The carriage of sugar, therefore, in cars that would otherwise go east empty, even at the bare cost of the service, is better than hauling the cars empty, and if a moderate profit can be made from the transportation it is a substantial gain, and relieves to that extent the burden that would necessarily fall upon the other traffic. New Orleans Cotton Exchange *v.* Ill. Cent. R. R. and others, 3 I. C. C. Rep. 534. The cost of maintenance and of operation, as well as fixed charges, must obviously be apportioned upon the traffic as a whole, and the addition of a considerable volume of traffic upon which even a small proportion of these necessary expenses can be charged, inures to the benefit of the traffic in general. All intermediate points, therefore, are benefited by traffic that goes to the Missouri river, upon which a portion of the imperative charges of maintaining and operating the roadway can be distributed. *In re* L. & N. R. R. Co., 1 I. C. C. Rep. 72.

A consideration of great if not controlling importance in connection with this question is whether the transportation of sugar from San Francisco to the Missouri river at the low rates charged is legitimate competition. It is now the only article of importance upon which exceptional rates are supposed to be necessary. If the transportation can only be carried on at a loss to the carrier, and without profit to the dealers, it is clearly unnatural and forced competition, and the lower rates made for the purpose could not be justified, as related to the higher rates to intermediate points. In that case the losses on Missouri river business would be charged upon the business to intermediate points, and this would be unjust discrimination, in contravention of the law. A fundamental rule of equity, as well as of the statute, is that all business done by a carrier must yield some profit, so that other business is not made to bear a burden that does not belong to it. *In re* L. & N. R. R. Co., 1 I. C. C. Rep. 70.

It is claimed by the respondents in these cases that this

principle is not violated, and that intermediate points, instead of being injured by the imposition of a part of the burden of the Missouri river sugar traffic, are helped to no small extent by that traffic. Evidence was given to show, and does show, *prima facie*, that all the sugar carried by these lines to the Missouri river yields some profit. The lowest profit shown was six dollars per car of twelve tons. Whether this evidence might be successfully controverted can not now be determined, but it must be assumed for the purposes of the case to have been substantially accurate, as it was wholly uncontradicted.

The Missouri river seems to be the limit at which San Francisco can successfully compete with sugar from Atlantic coast points. The tides of commerce in this article seem to meet at the Missouri river, and the territory is a common field of competition for sugar, whether it comes from San Francisco, New Orleans, or Atlantic coast points. The rates to this competitive territory would seem to be as low as the carriers from the Atlantic coast and the Pacific coast can afford to make them, with any profit in the business, and with only a slight margin of profit to the dealers. The proportions of sugar received from the Atlantic and from the Pacific coasts do not vary greatly, but are somewhat in excess from the Atlantic coast. If the San Francisco sugar should be carried farther east the rates manifestly would have to be reduced lower than at the Missouri river in order to compete with the eastern sugar. As this would reduce the rates below the cost to the carrier, the competition would manifestly be illegitimate, and the carrier could not lawfully reimburse itself by increased charges at points where no such competition exists.

If the question were an original one, whether, for the purpose of creating a competition in a particular commodity like sugar, an exception should be made in the customs laws of the country for its introduction, and the general rules of rate-making subjected to a strain, and the commercial profit upon the article almost destroyed, there are many forcible considerations that might be urged against the policy. There were strong reasons, however, for importing and refining raw

sugar on the Pacific coast. The paramount reason, perhaps, was to procure the commodity at cheaper cost to supply the large demand on the Pacific slope, shown to have reached 65,000 tons annually and to be increasing, which would otherwise have to be brought from the East at higher cost of transportation.

But we are dealing with a situation that has heretofore been created and is in existence, and the question is whether, in the actual situation, with the traffic accessible, the action of the carriers in accepting rates admitted to be unreasonably low for the carriers, but necessary to get the business, is in the line of legitimate competition, or is carried beyond that point.

Upon the facts adduced in evidence, and under recognized principles of transportation, the competition at the Missouri river, at the rates necessary for that purpose, can not be said to be illegitimate.

A more important consideration, and the one upon which chief stress is laid by the respondents, is the water competition in the transportation of raw sugar from San Francisco, and also from the Sandwich Islands, where it is produced. The conditions that have been laid down with regard to water competition as a justification for lower rates for a longer distance are that it must be actual, and of controlling force, and must relate to traffic important in amount. It is claimed in behalf of the respondents that the water competition in the transportation of sugar meets all these requirements. Some reference to the facts will be necessary to see to what extent this claim is sustained.

It appears by the testimony that sailing vessels can be chartered from San Francisco to New York for the carriage of raw sugar at $4.00 per ton, and that charters have been made as low as $3.75 per ton. It also appears that in one or two years about one-third of the quantity of sugar brought to San Francisco from the Sandwich Islands was sent by water around Cape Horn to New York or other Atlantic coast points.

In 1887, when the Act to regulate commerce first took effect, the low rates over the respondent lines to the Mis-

souri river were withdrawn, and San Francisco refineries shipped considerable quantities of sugar over the Canadian Pacific railway and its connections to the Missouri river at the rate of 65 cents per hundred pounds for the whole distance, although very much longer than by the respondent lines. In 1888 the Southern Pacific Company was applied to to transport sugar to St. Louis at 50 cents per hundred pounds, and, upon refusing, 11,000 tons were shipped by water around Cape Horn.

Railroad officials and other witnesses examined gave evidence that if the rate by rail from San Francisco to the Missouri river should be raised 10 cents per hundred pounds, and some thought five cents per hundred pounds, the traffic by rail would be stopped, because it would be cheaper to take the sugar by water to the Atlantic seaboard to be there refined and then shipped by rail west to the Missouri river. The evidence all tended to the conclusion that a higher rate than 65 cents would divert the traffic from the rail carriers and send it by water, and that vessel service was procurable. The water rate of $4.00 per ton from San Francisco is 20 cents per hundred pounds, and the addition of the rail rate westward from the Atlantic coast to the Missouri river gives the total transportation charge for that kind of competition. The rates on sugar in car-loads in effect the middle of June, 1889, were as follows: From Boston to the Missouri river, 54 cents per hundred pounds; from New York, 49 cents; from Philadelphia, 47 cents. On the first of April, 1890, these rates were reduced 7 cents per hundred pounds from each of these cities, making them 47 cents per hundred pounds from Boston, 42 cents from New York, and 40 cents from Philadelphia.

These latter rates, with the water rate added from San Francisco, of 20 cents per hundred pounds, very nearly equalize the rate of 65 cents per hundred pounds by rail from San Francisco to the Missouri river. Prior to the reduction on April 1st the rates from eastern points to the Missouri river with the water charges added were somewhat higher than the rate from San Francisco. The reason for the reduction of the rate from eastern points to the Missouri river of 7 cents

per hundred pounds, or $1.40 per ton, has not been explained by evidence, but the fact of the reduction gives additional force to the competition by water.

It is plain that the general effect of the competition from the East and West has been to force down rates in both directions to a very low if not the lowest possible point. Whatever result this may work to the railroads, the public has the benefit of low rates. As there is no exclusive right on the part of refiners in any portion of the country to sell sugar on the Missouri river or elsewhere, there is nothing unlawful, or prejudicial to the public interests, in this sharp competition for marketing a staple where a demand for it exists.

With all the competition in sugar in the Missouri river territory the cost to consumers seems only slightly to have decreased. The reduction is stated in the evidence to be about a quarter of a cent a pound. The jobber's profit, on the Missouri river, is stated at the same sum.

Since the latter part of 1888 the San Francisco sugar that has gone east, has it would seem, all been carried by rail. None has been shown to have gone by water during that time. Vessels at no time have been regularly engaged in the business. When desired they have been procured by special charter. The voyage by water from San Francisco to New York averages about one hundred and ten days. The time by rail is from ten to twelve days. In the carriage by water sugar is usually damaged from five to ten per cent. The damage to the article and the time required are the two disadvantages of this mode of carriage. Its superior advantage is in the low cost of transportation.

The tendency of the testimony as a whole is that a higher rate than 65 cents per hundred pounds diverts this commodity from the rail lines. At one time large quantities sought the Canadian Pcific route at that rate. At other times one-third of the amount of the commodity at San Francisco, being substantially equal to the shipments to the Missouri river, took the water route *via* Cape Horn. In view of the facts shown the competition is evidently more than a possibility. It is an ascertained condition, and of such controlling force as to fix

a limit upon rail charges. The conclusion is fairly warranted, therefore, in respect to water competition, that of itself it is an element so far actual, and of such force in relation to traffic important in amount, as to fall within the principles heretofore laid down, and sufficient, in connection with the other considerations to which reference has been made, even if alone it might not be adequate, to furnish a lawful reason for the lower charge to the Missouri river.

It has already been indicated that there is a limit to the reduction in rates a rail carrier may properly make in competition with a water carrier. A carrier by rail has no better transportation rights than a water carrier. Both are lawful and necessary instrumentalities of commerce. Both are indispensable, and the rail carrier must compete fairly, and is not at liberty to resort to unlawful methods to divert traffic from a water carrier. Rail rates that sacrifice all benefits to the carrier from the business in order to divert it from competitors by water, are destructive and illegitimate competition. One theory of reducing rail rates to meet water competition is that water transportation is essentially cheaper than by rail. For obvious reasons this is the fact. The water carrier's investment is mainly limited to the vehicle of carriage, and his operating expenses to the agencies necessary to manage it, and any incidental expenses connected with the business; while the rail carrier, besides the vehicles of carriage, has an extensive plant to construct and maintain, and a vast amount of unavoidable charges permanent in their nature to keep himself in readiness for business, whether business be large or small. These necessary outlays can only be met by higher ayerage rates for rail than for water carriage. When, therefore, a rail carrier reduces its rates, to compete with a water carrier, below the averages necessary for its own proper uses, it takes upon itself the onus of showing that the reduction does not result in actual loss, so as to impose a burden on other traffic, and does not unjustly discriminate against localities that are charged higher rates on like traffic.

A *prima facie* justification having been made out by the respondents for a lower charge to the Missouri river, the question remains whether the higher rate of 85 cents per hun-

dred pounds at Humboldt is disproportionate and unreasonable. If the fact were that the rate to Humboldt is higher than it otherwise would be, in consequence of the lower rate to the Missouri river, it would be indefensible on any grounds. But under the evidence this is not the case. Humboldt participates in the advantages of the low Missouri river rate. Except for that rate the Humboldt rate, on anything like a mileage basis, would be very much higher than 85 cents. It would be the maximum rate on the line, or higher in an ascending scale.

The influence of the water competition that forces the low rate at the Missouri river is operative for some distance west of the river, though in gradually diminishing rigor. *In re* Louisville and Nashville R. Co., 1 I. C. C. Rep., 81. It is supposed to be exhausted when a point is reached where rates from the east and from the west that are claimed to be reasonable and necessary average charges are substantially equal. In the practice of these carriers the ratio of this influence is measured by the local rates in effect from Kansas city, and the sum produced by adding any of these local rates to the through rate is made the amount of the straight rate to any designated intermediate point until the combination of the two equals the maximum rate in effect to any point.

The theory of a combination rate made up of a through rate to some point and the local back to another point on the same line, without showing the straight rate on the schedules, although popular with carriers, is an anomaly in rate-making. A straight rate to every point on a line, and duly shown on the tariff sheets, is undoubtedly the correct method. But if the local back from the point where a reduced rate is lawful is recognized as the measure of addition to fix the amount of the straight rate, in case the local is reasonable and works no unjust discrimination, it is not apparently objectionable for that purpose. And the practice that at one time seems to have been common, though now mostly discontinued, of actually hauling cars intended for an intermediate point to the terminus of the through route, and then hauling them back again, perhaps a hundred miles or more, to their actual destination, is an absurdity. The theory for

this practice was that, as the rate was based on such double hauls, they should actually be made, to comply with the law. Besides the delays and annoyances caused to consignees by this practice, it was palpably in the nature of a device, and was, moreover, unnecessary in any legal sense. The higher charge could not be made lawful by a wholly superfluous service, and if lawful it needed no spurious cover.

As an illustration of the practice referred to, traffic coming over the Texas & Pacific and Missouri, Kansas & Texas lines could be transferred by the latter at Parsons to its Junction City branch and hauled directly to Humboldt without the circuitous and wholly unnecessary haul to Kansas City and then back over different roads to Humboldt. If carriers find it necessary to resort to abnormal methods in making their rates, that does not absolve them from the character of service they are required to render the public.

The complainants' contention that Humboldt, on the ground of distance alone, regardless of dissimilar conditions, is entitled to a rate not higher than the competitive Kansas City rate, manifestly inadequate for the general business of the lines, not being sustained on the facts presented, and a higher charge being permissible, the question is whether the existing rate is too high and therefore unjust. The tendency of the evidence is not conclusive in favor of the complainants on this point.

The reasonableness of the local rate from Kansas City to Humboldt, of 20 cents per hundred pounds, in car-loads, for a haul of 118 miles, is not assailed, and the addition of this local rate to the through rate to make the sum of the straight rate to Humboldt is not apparently unreasonable in view of the fact that Humboldt is not on any of the through lines, but must be reached by transfer of the cars to other delivering roads which are entitled to reasonable compensation, and of the further fact that the empty cars must, as a rule, be hauled from Humboldt to Kansas City for freight to go west. The straight rate by this method is lower than it would be if the through rate was billed at the through rate, but was to be collected in addition and the local to Humboldt

For example, the rate from Junction City on the Union Pacific line, to Humboldt, over the Missouri, Kansas & Texas road, is 32 cents per hundred pounds. Junction City is 139 miles west of Kansas City. A combination on the basis of these two rates would be much higher than on the basis of the present combination. And no unjust discrimination against Humboldt in favor of Kansas City is apparent in the existing plan. The Kansas City dealer can only reach Humboldt at the same car-load rate as the complainants. But to compete with the Humboldt dealer at that locality, or in its distributing territory, the Kansas City dealer must, in addition to the jobber's profit of 25 cents a hundred pounds and any terminal expense, ship out in less than car-load quantities at the higher rate of 25 cents per hundred pounds.

These circumstances measurably protect the Humboldt dealer, and so far as can be seen no undue advantage is given to the dealer at Kansas City. Exact mathematical equality between all localities is not attainable. Some slight differences in the immense complication of localities and of roads are inevitable, and if these differences are substantially reasonable there is no unjust discrimination. This point was considered in the case of the Lincoln Board of Trade, 2 I. C. C. Rep. 161, and the observations there made are pertinent here.

Sugar from the East billed through to Kansas City and then shipped out on the local rate reaches Humboldt at about the same aggregate charge, as appears by the tables in the statement of facts, as the charge from San Francisco to Humboldt. From Philadelphia, at the present rate, it is five cents a hundred pounds lower, and from New York three cents a hundred pounds lower. The complainants have a choice of markets, therefore, at nearly the same rate, and are not restricted, by reason of rates, to the San Francisco market.

It is not to be inferred from anything said in these cases that the method of making rates that have been considered can be perpetual, or be applied where they are not fully warranted by the exceptional conditions, or in such instances longer than the compulsory character of the conditions will

justify them. Undoubtedly the true economic rule for a railroad, and the one that is most conducive to its own prosperity as well as to all interests along its route, is an equitable system of rates graduated on the general rule of the statute, and free from any element of apparently unjust discrimination. This has been illustrated by the consistent practice of some of the most successful roads of the country. This rule legitimately develops business by creating opportunities which human enterprise is alert to discover and improve.

Upon all the facts the conclusion of the Commission is that there is no unjust discrimination against the complainants, nor undue prejudice, occasioned by the rates on sugar charged by the respondents from San Francisco to Kansas City and to Humboldt respectively, and the complaints are therefore not sustained.

Martin, Commissioner:

I concur in the conclusion reached in the above opinion, but not for the reasons therein assigned. The dissimilarity in the circumstances which justifies the greater charge for the shorter distance results from the fact that Humboldt, the shorter distance point, is off of the through and direct lines of any route from San Francisco to Kansas City. The expense of maintaining separate equipment and operating short hauls adds considerably to the cost of transportation.

From [illegible] opinion, the same thing as water competition [illegible] San Francisco and Kansas City in the carrying [illegible] refined sugars. Refined sugar has never [illegible] it was not, as it likely to be, around [illegible] from San Francisco to New York. The experience [illegible] failure because such carriage [illegible]

[illegible] on the Pacific coast in [illegible] In the regular course of commercial [illegible] does not pass from [illegible] San Francisco to [illegible] San Francisco in [illegible]

The occasions when they have been shipped from San Francisco were when the market for sugars to refine was overstocked. The occasions were wholly exceptional, and, in my opinion, the shipments as made furnish no justifiable ground on which to base an opinion that the carrying was, or in the nature of things can be, of such a character as will justify a decision based on the controlling force of water competition in the carriage of sugars between San Francisco and the Missouri river. Neither does the competition of railroads in carrying refined sugar from Atlantic ports and cities make the dissimilar circumstances and conditions which would take the carrying in question out of the general rule against unjust discrimination under section two of the Act to regulate commerce.

HULBERT H. WARNER *v.* THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, THE WEST SHORE RAILROAD COMPANY, THE NEW YORK, LAKE ERIE & WESTERN RAILROAD COMPANY, THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY, THE NEW YORK, ONTARIO & WESTERN RAILWAY COMPANY, THE PENNSYLVANIA RAILROAD COMPANY, THE BALTIMORE & OHIO RAILROAD COMPANY, THE PHILADELPHIA & READING RAILROAD COMPANY, THE LEHIGH VALLEY RAILROAD COMPANY, AND THE GRAND TRUNK RAILWAY COMPANY OF CANADA, AS MEMBERS OF THE "TRUNK LINE ASSOCIATION."

Complaint filed September 14, 1889. Answers filed October 4 to December 14, 1889. Heard and submitted February 19, 1890. Decided May 21, 1890.

In arranging the classification of articles of commerce, their market value and the shippers' representations to the public as to their character may properly be taken into account in ascertaining the analogy they bear to other articles, and determining the class to which they justly belong. This is especially applicable to articles in which there is no free competition among producers and shippers. And carriers are not required to estimate the intrinsic value of freight as distinguished from its commercial value for purposes of classification and rates.

The volume of traffic supplied by an article for transportation is also an element that may be considered in its classification, as a basis for rates that are reasonable both for carriers and shippers.

Patent medicines manufactured and shipped by the complainant are rated in the official classification as first class for less than car-loads and third class for car-loads. Ale, beer, and mineral water are rated in the official classification [illegible] 6th class in car-loads. The [illegible] three times or more higher than that [illegible] quantity transported much

less. Upon complaint made that the patent medicines should be classified the same as ale, beer and mineral water:

Held, That in view of the much higher market value of the medicines and the smaller volume of traffic they supply a higher classification than for the other articles named, in which there is much greater competition among shippers, it is not unreasonable, and the classification at present in force is not shown to be unjust.

J. L. Lucky, for complainant.
Frank Loomis, for N. Y. C. & H. R. R. R. Co.
Ashbel Green, for West Shore R. R. Co.
J. A. Buchanan, for N. Y., L. E. & W. R. R. Co.
John B. Kerr, for N. Y., O. & W. Ry. Co.
James A. Logan, for Penna. R. R. Co.
J. K. Cowen, for B. & O. R. R. Co.
G. R. Kaercher, for P. & R. R. R. Co.
F. H. Janvier, for L. V. R. R. Co.
E. W. Meddaugh and *William A Day*, for Grd. Tr. Ry. Co. of Canada.

REPORT AND OPINION OF THE COMMISSION.

SCHOONMAKER, *Commissioner:*

The petition shows that the complainant is a manufacturer of proprietary or patent medicines at Rochester, N. Y., and that the respondent companies are members of the Trunk Line Association and transport freight under what is known as the Official Classification.

The complaint made is, in substance, that Official Classification No. 6, dated August 15, 1889, classifies "Medicines Patent, N. O. S. (not otherwise specified), in glass, packed in wood, O. R. (owner's risk of) fermenting, freezing, or breakage" first class in less than car-loads and second class in car-loads, and that transportation charges based on the classification discriminate against the petitioner's business in that they are higher than rates formerly charged on the same articles, and higher than the rates charged on ale, beer, and mineral waters, which are alleged to be similar to patent medicines in bulk, value and otherwise, and which are shipped in like quantities under the Official Classification as

third class in less than car-loads and fifth class in car-loads. That prior to August 15, 1889, medicines patent, in glass, &c., were given third-class rates by the Official Classification when shipped in car-loads, and prior to April 4, 1887, the railroads operating under the Middle and Western States Classification transported patent medicines at third-class rates in less than car-loads and at fifth-class rates in car-loads.

The answers of the different respondents are substantially the same. In substance they deny that the classification put into effect August 15, 1889, produced an unjust discrimination against the petitioner, or that it provides for higher rates than those charged on similar articles shipped in similar quantities. They further set forth that the railroad companies composing the Trunk Line Association, subsequent to the date of Official Classification No. 6, issued a supplement wherein patent medicines in car-loads are reduced from second class to third class, and that this change provides a rate which can not justly be complained of by petitioner or others in the same business. They admit that the traffic in question was classified prior to August 15, 1889, as alleged in the complaint, but say that as to the rates charged prior to April 4, 1887, by railroads in the Middle and Western States Association, they are not called upon to answer thereto, such rates having been various, and made according to the views then held by the several companies and associations making the same.

The material facts in the case are as follows:

The complainant has for several years been engaged in the manufacture and sale of patent medicines at the city of Rochester, N. Y. These medicines consist of different classes, and of several varieties under each class. The classes are designated "Warner's Safe Remedies," varying in price from $3.75 to $10 per case of a dozen bottles, depending on size of a bottle and character of remedy; "Warner's Log Cabin Remedies," varying in price from $3.75 to $7 per case of a dozen bottles; and "Benton's Hair Grower," vary-

ing in price from $7.50 to $20, according to the strength of the remedy.

The shipments by the complainant are made in quantities of usually not less than one ton, and from that to car-loads, to all parts of the United States and over all roads, including those named in the petition.

On the respondents' lines the Official Classification is used. In the first four editions of the Official Classification, issued respectively April 1, 1887, July 15, 1887, February 1, 1888, and August 15, 1888, these medicines were embraced in the first class, and no classification was given for car-loads. By supplement issued October 16, 1888, to the fourth edition, less than car-loads were put in first class and car-loads in third class. In the fifth edition, issued February 18, 1889, patent medicines N. O. S. were placed in first class, with no classification for car-loads; and patent medicines N. O. S., in glass, packed in wood, C. R. (carrier's risk), were double first class, and no lower class for car-loads; and patent medicines N. O. S., in glass, packed in wood, O. R. fermenting, freezing or breakage, valuation on basis of 25 cents per quart and to be so stated on shipping receipts by shippers, third class, no lower classification for car-loads. In the sixth edition, issued August 15, 1889, medicines N. O. S. were placed in first class; medicines N. O. S., in glass, packed, C. R., double first class; medicines, patent, N. O. S., in glass, packed in wood O. R. fermenting, freezing or breakage, less than car-loads first class, car-loads second class. By supplement to the sixth edition, issued October 10, 1889, the last-named specification in less than car-loads was placed in first class, and in car-loads in third class. No valuation clause is contained in the Official Classification No. 6 or the supplement thereto. In the seventh edition, issued April 15, 1890, since the hearing, the change made by the supplement is incorporated in the classification. In other respects there is no change.

The classification of the articles with which the patent medicines in question are compared by the complainant appears as follows in the different editions of the Official Classification: In the first edition ale, beer, porter, or mineral

waters, bottles, well packed in barrels or boxes, O. R. less than car-loads third class, car-loads fifth class. In the second edition ale, beer, or porter, in open carriers, C. R., first class; ale, beer, or porter, in open carriers, O. R., less than car-loads third class; ale, beer, porter, or mineral waters, bottles, well packed in barrels or boxes, O. R., less than car-loads third class, car-loads fifth class. In the third, fourth, fifth and sixth editions ale, beer or porter and mineral waters, bottles, well packed in barrels or boxes, O. R., less than car-loads third class, car-loads fifth class.

The patent medicines in question are in bottles, packed in boxes which average a cubic foot in size and weigh thirty-five pounds. Freight agents regard them as desirable freight to handle. Packages of medicine are somewhat similar to packages of ale, beer and mineral water.

No change has been made in the less than car-load rates since the Act to regulate commerce went into effect, but during that time car-loads were advanced from third to second class, at an increase in rates of from twenty to thirty per cent.

The first class rate from petitioner's place of business to Chicago is 53 cents per hundred pounds, the second class rate is 46 cents, and the third class rate is 35 cents. The advance made August 15, 1889, increased the rate from 35 to 46 cents per hundred pounds. The St. Louis rates advanced from 41 cents to 53 cents per hundred pounds. The first class rate to East St. Louis is 61 cents; and third class rate 41 cents. The rate on ale, beer, porter and mineral waters, in less than car-loads, to Chicago is 35 cents per hundred pounds, and to St. Louis 41 cents; in car-loads, to Chicago 21 cents, and to East St. Louis 25 cents.

The liquid medicines are mostly extracts of herbs, diluted with water, and containing from ten to twenty-five per cent. of alcohol. The shipments made by the complainants have averaged about the same each year. About sixty car-loads were shipped in car-load lots in 1889. The quantity of ale, beer and mineral water shipped in car-loads is much greater than shipments of complainant's medicines. In the instances of shipments of ale, beer and mineral water, the bottles and

cases in which they are shipped come back to the shippers, and the railroads get some return freight thereon, but at a low rate. In the case of complainant's shipments the bottles never come back.

The complainant sells more Safe Cure than any other of his remedies—nearly as much as all the others combined. The average value of the goods per case, with the discounts off, is $9. A case contains a dozen bottles. From six to seven hundred boxes make a car-load, and at the third class rate the minimum car-load is twenty thousand pounds. A car-load, of six hundred boxes at $9 per box, amounts to $5,400. According to a price-list of an importer of ales at New York a car-load of ale or beer, at $3 per case, one dozen bottles to the case and six hundred cases to the car-load, would amount to $1,800. The retail price of the Safe Cure is $1.25 per bottle. The retail price of mineral waters is from 25 to 30 cents per bottle for quart bottles, and in some instances 50 cents per bottle. The complainant's bottles contain a little over a pint.

A case for beer or ale is somewhat larger than a case for the complainant's remedies. The weight of a case of Safe Cure in bottles is thirty-six pounds including the box, and the weight of a case of beer is about forty-five pounds. On the basis of value a car-load of beer, compared with a car-load of Safe Cure, pays about four times as much freight.

The usual shipments of mineral waters are in casks. Most of the shipments of ale and beer are in barrels. Shipments of ale and beer are made at owner's risk of everything except actual loss, as in case of collisions, and the same rule applies to complainant's product. Losses scarcely ever occur in the case of complainant's shipments. The total amount of complainant's annual shipments is something over 200,000 boxes. The market value, in round numbers, less discounts to the trade, is $1,500,000. The market value of the remedies is made by advertising. The actual value is less than twenty-five per cent. of the market value.

Some ales and beers are put on the market as tonics.

The complaint in this case was filed when car-loads were embraced in the second class. There was apparently just

ground of complaint for that classification. The change in the classification made soon after the complaint was filed, reducing car-loads to third class, was a proper correction, and removed to a great extent the substantial ground of complaint. It was, in fact, conceded by complainant on the hearing, that there was at least doubt whether the complaint would have been filed if this reduced classification had previously existed.

One ground of complaint on the part of the complainant is the frequent changes made in the classification of complainant's medicines. There is justice in this complaint. These changes seem to have been made with annoying frequency and to have been mostly inconsistent and arbitrary. No explanation was offered by the carriers for these repeated changes.

The carriers concede by their own action that the complainant is fairly entitled to a car-load classification, and, moved possibly by the complaint filed, car-loads were eventually placed in the third class. No reason whatever has been assigned why this was not done from the first. From the carriers' point of view it is now admitted to be just, and if just now it was just at the time of the first official classification.

The complainant, however, is not fully satisfied with the present classification. He insists that the classification of his remedies shall be the same as that of ale, beer, and mineral waters; and this contention is based on two general grounds. One is that the mode of packing, the convenience in handling, and the risks in transportation are substantially the same. The other is that the intrinsic value of the remedies is no greater than the intrinsic value of the other articles with which he claims they should be classified. It is said in behalf of the complainant that, while the market value of the remedies is about four times greater than that of mineral water and the other articles, about three-fourths of the market value is the result of skill in advertising the remedies. Whatever the fact may be in the case of these medicines, it can hardly be expected of carriers that they should disregard the market value of the articles they carry, and what their manufacturers give the public to understand concern-

ing them, and enter upon the difficult and expensive task of an analysis of freight to ascertain its intrinsic value as distinguished from its market value.

If a rule of this kind were possible and should be generally applied, it would result in most injurious consequences to some of the most important articles of commerce of large actual value, but, on account of their abundance, of low market value, such as grain and other food products, coal and lumber.

The value of an article to a manufacturer is the price it commands, and it seems only reasonable that carriers should take into account the market value, a thing generally known and easily ascertained, as one of the considerations in arranging their classifications and fixing the rates that a commodity should bear. It is not seen how the relations that any specific commodity should bear to other commodities for classification purposes can be arrived at in any other practicable way. The wide difference in the market value of ale, beer, and mineral water on the one hand, and the remedies of the complainant on the other hand, is, so far as can be seen under the evidence in this case, a reasonable ground for a difference in the classification of these respective articles.

The difference in market value is doubtless due largely to the free and active competition among producers and shippers of the other articles. In the case of patent medicines the right to manufacture and sell is exclusive, and the commodity is not affected by competition to force down its market price. The principle of the value of the service to the shipper in such cases allows a higher rating than where unrestricted production and strong competition in substantially like traffic influence commercial values and require rates under which business can be done.

Another ground for a difference exists in the very much greater quantities of ale, beer and mineral waters transported than of the medicines of the complainant and similar articles. Both the market value of the commodities and the volume of business they furnish to carriers are proper elements to be considered in the classification. The volume of traffic implies only the extent to which a particular article

has become a subject of transportation, and does not imply that a large shipper of the same or like traffic can have any advantage over a shipper of smaller quantities. Like traffic of large shippers and of small shippers must have the same classification for car-loads and the same for less than car-loads.

The point made by the complainant that a lower classification and rate were given to the medicines in question in some of the numerous classifications in existence prior to the general Official Classification, is in no way controlling. The class rates in the Middle and Western States Classification, prior to April 4, 1887, were in fact higher than they are under the Official Classification, and there was a general lack both of consistency and uniformity in the classifications and rates that prevailed prior to the 4th of April, 1887. This point and most of the others that are raised in this case received consideration by the Commission in the case of Myers *v.* Pennsylvania Co. *et al.*, 2 I. C. C. Rep. 573, and the discussion and conclusions in that case substantially cover the questions in this case.

As the classification is now arranged and has existed since October 10, 1889, the complainant's remedies are in the first class in less than car-loads and in the third class for car-loads. It is clear that they should be classed no higher than these classifications. No question is raised as to the relative classification of car-loads and less than car-loads. It is also plain that there is no just reason why carriers should be compelled to put them upon an equality with ale, beer, and mineral waters, and it is not apparent that justice requires a compulsory change to a lower classification either for car-loads or less than car-loads. If transportation reasons, or other reasons, hereafter arise for more favorable classifications, they can be presented and acted upon, or perhaps may be found satisfactory to carriers themselves.

On the facts now before the Commission the complaint as against car-loads in the third class and less than car-loads in the first class is not sustained, but it is ruled that the classification of car-loads in the second class, at the time the complaint was filed, was unjust.

THE ANDREWS SOAP COMPANY *v.* THE PITTSBURGH, CINCINNATI & ST. LOUIS RAILWAY COMPANY, THE CINCINNATI, HAMILTON & DAYTON RAILROAD COMPANY, THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY, THE CINCINNATI, WASHINGTON & BALTIMORE RAILROAD COMPANY, THE CHESAPEAKE & OHIO RAILWAY COMPANY, THE OHIO & MISSISSIPPI RAILWAY COMPANY AND THE NEW YORK, PENNSYLVANIA & OHIO RAILROAD COMPANY.

Complaints filed October 5, 1889. Answers filed October 23 to November 4, 1889. Heard January 10, 1890. Brief filed March 5, 1890. Decided May 31, 1890.

A manufacturer's description of an article to induce its purchase by the public also describes it for transportation, and carriers may accept his description for purposes of classification and rates. Carriers are not required to analyze freight to ascertain whether it is in fact inferior to the description or public representations under which it is sold, in order to give it a lower rate corresponding to its actual value.

Upon complaint by a manufacturer of soap, advertised and sold as toilet soap, charging unjust discrimination by classifying his product in the second class with other toilet soaps and not in the fourth class with laundry soaps, as he claims it should be classed, for the reason that his toilet soap is not substantially superior to soap put on the market by certain other manufacturers as laundry soap, which, under that description, is transported at a lower rate,

Held, that the manufacturer's description of his product for commercial purposes as an article of superior grade and value warrants its classification accordingly, and carriers are not required to classify and transport it as a laundry soap.

W. B. Burnet, for complainant.

J. T. Brooks, for Pittsburgh, Cincinnati & St. Louis R'y Co.

George Hoadly, Jr., for Cleveland, Cincinnati, Chicago &

St. Louis R'y Co. and Cincinnati, Washington & Baltimore R. R. Co.

W. H. Jackson, for Chesapeake & Ohio R'y Co.

James A. Buchanan, for New York, Pennsylvania & Ohio R. R. Co.

REPORT AND OPINION OF THE COMMISSION.

SCHOONMAKER, *Commissioner:*

The complaint in this case charges, in substance, that the complainant is discriminated against in the classification of soap.

Complainant is located at Cincinnati, O., and manufactures and ships generally throughout the country a grade of soap designated as toilet soap, which, for transportation purposes, is classified in the second class. It complains that other manufacturers produce and ship a grade of soap of substantially the same quality and cost of production as the soap of complainant, which is also used for toilet purposes but is not designated as toilet soap, and which is classified in the fourth class, with ordinary laundry soaps, when in less than car-loads, and fifth class in car-loads. The complainant claims the classification of its soap as toilet soap, giving it a higher class and consequently a higher rate for transportation, is a discrimination against its product.

The answers, in substance, deny any unjust discrimination against the soap of the complainant, and set forth that toilet or fancy soaps, on account of their higher value, are put in the second class, and common or laundry soaps are embraced in the fourth class, and that this is not done arbitrarily or unjustly, but pursuant to an Official Classification, prepared by a committee of experience and skill in matters relating to freight transportation, representing the various railroads engaged in transportation in the territory covered by the Official Classification, and adopted by those roads; that when soap is offered to them for transportation, and is labeled or designated toilet soap, it is understood to be in fact what its manufacturers represent it to be, and is carried at the rates appropriate for articles of the second class; and when soap

is offered for transportation as common or laundry soap, it is understood to belong to that class, and is carried at the rates named for articles pertaining to that class; that the carriers have no knowledge relative to the value of the different brands of toilet and laundry soap, or of the particular kinds of soap manufactured and shipped by the complainants, and that they ought not to be required to analyze the different varieties of soap offered for transportation, but are justified in accepting the description or designation given to their products by the different manufacturers.

The material facts are as follows:

The complainant manufactures and puts upon the market a kind of soap described in the trade as American castile soap, which is a soap intended and exclusively used for toilet purposes. Toilet soaps are embraced in the second class in the official classification, and this soap is carried in that class, at rates corresponding to the classification. Common or laundry soaps are in the fourth class in less than car-loads in the official classification, and soaps produced by other manufacturers, not described or put on the market as toilet soaps, are carried in that class, but are used quite largely for toilet purposes on account of their quality. These latter soaps have interfered to a considerable extent with the sale of the soap of the complainant. Evidence was given tending to show that the American castile soap, the toilet soap of the complainant, is of substantially the same quality, market value, and selling price as the soap with which it competes, which is not put on the market as toilet soap, and is carried in the fourth class.

The evidence shows *prima facie* that there is no very material difference in the soap of the complainant and the other soap with which it comes in competition. The distinction upon which the difference in classification and in rates is founded is that the complainant's soap is represented to be a toilet soap and the soaps with which it comes in competition in the markets are not represented to be toilet soaps, but laundry or common soaps.

The only question in this case is whether the carriers may

act upon the representations of manufacturers, and classify the goods carried according to those representations, or whether they must ascertain the quality and actual value of the goods they carry, notwithstanding the representations of the manufacturer, and base their classification and rates upon the actual value.

Toilet soaps as a rule average a much higher cost of manufacture than common or laundry soap. The approximate average of toilet soap is twenty-five cents a pound, and of common soap from four to five and six cents a pound.

In this case, if the soap of the complainant, which is represented as a toilet soap, is in fact of no greater value or cost of production than the common soap with which it comes in competition, the discrimination complained of in respect to the classification and rate could readily be obviated by putting it on the market and having it transported as a common or laundry soap. But in answer to this suggestion it was said on the hearing that the trade name of the complainant's soap is essential to the selling of the product, that it must be sold as a toilet soap, and that the complainant can not afford, by extensive advertising, to create the demand for it that is necessary to make its manufacture profitable, except as a toilet soap.

It was said in argument that the question affects equally all the small soap manufacturers of the country, and not simply the complainant; and it was conceded that the railroad companies have no disposition to discriminate against the complainant if they can find a way to solve the difficulty. It was frankly stated that the manufacturers and the railroads can not solve the difficulty, and that application was made to the Commission for a decision which will settle it.

A difficulty of this kind, which neither the manufacturers nor the carriers can find a satisfactory remedy for, can not, in the nature of things, be of any easier solution by the Commission. The only absolute solution that is apparent is the withdrawal of different classifications for toilet soap and for laundry soap and the adoption of one uniform classification for soap of all varieties. This is not claimed on the part of the complainant, and the carriers say that a different clas-

sification for articles differing so widely in their cost of production and selling price is only just to themselves as well as to manufacturers, and this seems no more than reasonable under generally accepted rules of classification.

The complainant insists that it can not change the designation of its product or the representation it makes to the public concerning it, for the reason that its soap is delivered as toilet soap, and it is necessary to its trade that it should have the benefit of so advertising it. This is, in substance, saying that, in putting its product on the market, the cost of production and the quality are not considerations by which it is to be governed, but it must have the benefit of a representation as to its character, not descriptive of its real character, to induce the public to purchase it as toilet soap. The use of the appellation "castile soap" or "toilet" soap implies a high grade of the commodity, and it is the assurance thus implied that the complainant desires. Competitors have found it feasible to market an article very extensively and to induce the public to use it as a toilet soap, without any representation concerning it other than a meaningless but taking name, and a statement that it is good for toilet purposes; and this is the exact discrimination complained of. The representations of different manufacturers as to the character and quality of their goods are accepted by the carriers as substantially correct, and their classifications and rates correspond to those representations.

A matter so extensive and difficult as classification of freights must evidently be mainly governed by general rules. This is indispensable to any system of classification at all. The alternative is a rate for every commodity separately, instead of a class rate for articles of enough similarity in some controlling features to be classed together. The rules for making classifications should very clearly be reasonable and fair, but under the best rules exact justice may not always be possible. Sometimes a classification necessary for certain articles is disadvantageous to carriers, and sometimes the application of a reasonable rule may be disadvantageous to a shipper of some commodity. The rule for all general purposes may be just, but its application in a particular case

may be severe. If in such a case an exception can be made without leading to worse results than are produced by an adherence to the rule, it is only reasonable to allow the exception. But if the exception demanded is in effect the creation of another rule which it may be necessary to apply generally, or even to many articles, and which may be difficult in practice and objectionable in principle, there are good reasons why it should not be ordered. The Commission must obviously survey the whole field, and not work general confusion by an effort to do seeming justice in a particular case.

And this is the attitude of the case in hand. The Commission is asked in the case of a particular article to order that its classification shall not be governed by what it purports to be but by what it is claimed to be in fact. An order of this kind would necessarily be general and apply in other cases. Besides, its effect would be to discriminate against the other articles which the one in question purports to resemble in quality and uses.

If, for example, an order were made that because a particular variety of soap represented to be a toilet soap by its manufacturer has in fact no higher market value, or quality superior to soap classified as laundry or common soap, therefore it must be classified and carried as laundry or common soap, the manufacturers and shippers of other toilet soaps would very probably complain that undue preference and advantage are given to manufacturers benefited by such an order, and questions would be likely to constantly arise to determine the relative value of toilet soaps and of laundry soaps. The Commission is unable to see how it can properly or justly require carriers to analyze the freight offered to them, to ascertain its quality and its actual value, when those are claimed to differ from its trade designation and the price paid by the consumer. A rule of that kind would be altogether impracticable.

The public is more interested than carriers in representations made concerning the character and qualties of articles of commerce. The carriers simply serve manufacturers and producers of all kinds, and have no responsibility for the

quality of the goods. The public is entitled to truthful representations respecting goods offered for sale. If an erroneous representation is essential to the sale of a commodity it is not inequitable that some burden should be a necessary consequence.

When a manufacturer describes his article to the public for the purpose of making a market for it, he also so describes it for purposes of carriage, and it seems as reasonable that the carrier should have the right to accept the manufacturer's representation concerning his product as that the public should be influenced by it in the purchase of the article.

Upon the assumption that a difference in classification is reasonable for higher and lower grades of soap, the view of the Commission is that carriers may properly be governed in their classification and rates by the representations of the manufacturers concerning the grades of the articles. In this particular instance it is possible that a hardship may exist on the part of this complainant, but it is one that seems removable by its own act, in changing the descriptive designation of its soap; and the Commission can not see how any general rule can be laid down that will relieve the complainant and be just to other manufacturers and shippers, as well as to carriers.

The complaint is therefore not sustained.

IN THE MATTER OF ALLEGED EXCESSIVE FREIGHT RATES AND CHARGES ON FOOD PRODUCTS.

1. The rate of compensation which railroad companies may lawfully receive for transportation services can not be so limited that the shipper may in all cases realize actual cost of production.

2. Charges for transportation service should have reasonable relation to cost of production and to the value of the service to the producer and shipper, but should not be so low on any as to impose a burden on other traffic.

3 In the carriage of great staples, which supply an enormous business and which in market value and actual cost of transportation are among the cheapest articles of commerce, rates yielding only moderate profit to the carrier are both necessary and justifiable, and where the carriers frequently put in force and continue for considerable periods of time tariffs of rates and charges, it is a fair inference that such rates and charges are profitable.

4. Transportation charges now made on corn and oats between the Mississippi river and eastern cities, based on twenty cents per hundred pounds from Chicago, and twenty-three cents from East St. Louis to New York city, are less than 4 4-10 mills per ton per mile and are not excessive.

5. The charge of twenty cents on the hundred pounds of corn and oats from the Missouri river to Chicago, and five cents less to the Mississippi river is excessive, and to be reasonable should not exceed seventeen cents to Chicago, and twelve to the Mississippi river, east side.

6. The rates on corn and oats in force from stations in Kansas and Nebraska to the Mississippi river, east side, and to Chicago, are two cents in excess of reasonable rates.

7. Any transportation charges between the Mississippi river and New York city on wheat and flour based on a higher rate than twenty-three cents per hundred pounds from Chicago to New York city is unreasonable, and any rate on wheat and flour carried from any one place to another which is more than fifteen per cent. above the rate on corn and oats between the same places is unreasonable.

8. The rate of forty-six cents per hundred pounds on grain and fifty-one cents on flour and meal between the grain region in Kansas and a large district in Texas is the same for distances shorter than two hundred and fifty and longer than eight hundred miles, and are unreasonably high for the longer and grossly excessive and extortionate for the shorter distances.

9. In fixing reasonable rates the requirements of operating expenses, bonded debt, fixed charges, and dividend on capital stock from the total traffic are all to be considered, but the claim that any particular rate is to be measured by these as a fixed standard, below which the rate may not lawfully be reduced, is one rightly subject to some qualifications, one of which is, the obligations must be actual and in good faith.

REPORT AND OPINION OF THE COMMISSION.

MORRISON, *Commissioner:*

On the 19th of February, 1890, the Senate of the United States passed the following preamble and resolution:

"Whereas, the Act to regulate commerce, approved February 4, 1887, and amendments thereto, direct the Interstate Commerce Commission to enforce the provision of the Act requiring rates of common carriers engaged in interstate commerce to be reasonable and just, and authorize the Commission to determine as to the reasonableness and unreasonableness of such rates; and

"Whereas, it is alleged that by reason of excessive freight rates on lines of railways subject to the jurisdiction of the Act of Congress to regulate commerce between the several States, the great section of the country lying between the Rocky mountains and the principal food distribution centers of the East finds itself unable to market its food products and obtain for them the actual cost of production; Therefore, be it

"*Resolved*, That the Interstate Commerce Commission be, and is hereby directed at the earliest practicable time to make an investigation of the allegation above stated, and to ascertain and report to the Senate whether such rates are reasonable or unreasonable, and whether a reduction of such rates is prevented or hindered by reason of the operation of any provision of the Act to regulate commerce, and whether a more stringent enforcement of the Act referred to is practicable and would remedy the evils complained of."

On receipt of a copy of the preamble and resolution the Commission proceeded in accordance with the provisions of

the Act to regulate commerce, to make the investigation which was by said resolution directed to be made.

In making such investigation the Commission, through some of its members, prosecuted inquiries at Topeka, Kansas; Lincoln and Omaha, Nebraska; Sioux City, Iowa; Peoria and Chicago, Illinois; at Boston, New York, Baltimore and Newport News, and at the office of the Commission in Washington, D. C.

The carriers were notified of the investigation and were given time until May 22, 1890, to call witnesses, give testimony and present argument. The companies desiring to be represented at the taking of testimony appeared by counsel, cross-examined witnesses and called other witnesses in their own behalf.

As a result of the investigation and inquiries made the Commission finds the following pertinent facts upon which its conclusions are based: Products of the farm are not as a rule shipped to distant markets by farmers. They sell and deliver their grain, especially corn, at adjacent railway stations to dealers who buy, sell and ship on their own account or for a small commission, paid them by other dealers at or nearer to eastern markets.

The price of farm products at railway stations is usually the market price in Chicago, St. Louis, New York or other markets to which shipments from such stations are usually made, less transportation charges and commissions.

The price at different stations varies in something like the proportion of variance in cost of railway transportation to market from such stations.

Frequent changes occur in market prices when there is no corresponding change in transportation charges.

Since the ripening of the last crop, the only change in rates on corn was a slight reduction from stations west of the Missouri river. The prices in that region for the last crop have ranged from twelve to eighteen cents per bushel, depending on distances, but the variance at any one station did not exceed three cents prior to April 1st. There was a decline in the winter, and there has been a slight and continuing increase in price from early spring.

The movement of grain is largest in the first six months after crops ripen, but is continuous throughout the year.

Through or continuous shipments of food products are made to eastern ports and markets from Chicago and from the Mississippi river, and not from points further west. The rates on such through shipments from the Mississippi are apportioned among the lines on something like a distance basis. Such rates are based on rates to New York, and are two cents less to Philadelphia, three cents less to Baltimore and Newport News, and five cents more to Boston than to New York.

On through shipments to the Mississippi and to Chicago rates are apportioned on agreed percentages.

From points west of the Mississippi river shipments are made through to Mississippi river, east side, or to Chicago, and not to points further east than Chicago.

The Missouri river from Kansas City to Omaha or Council Bluffs is a line from which rates are made to the Mississippi, east side, and to Chicago on east-bound freight.

From stations west of Missouri river, rates are made by adding to the east-bound rate from that river an increase graduated westward. The increase rising on corn from nothing, at the river, to 5 cents per 100 lbs. towards the outer limit of the corn belt—that is to say, the rate to Chicago, which is 20 cents from the river—is graduated and increased further west to 25 cents, which is the highest or maximum rate.

Rates on Food Products in Effect February 20, 1890.

From—	To—	Rates in cents per 100 lbs.—Commodities. Corn.	Flour, Wh't & other gr'n	Cattle.	Live hogs.	Dressed hogs.	Dressed beef.
Chicago.....	New York..	20	25	26	30	45	45
Mississippi river points, when traffic comes from beyond.	New York..	23	29	31	35	50	50

From—	To—	Corn.	Rye, oats & barley.	Flour, meal wh't, oth'r grain.	Live cattle.	Live hogs.	Packing-house products.	Dres'd hogs and dres'd beef.
Missouri river p'nts (Kansas City, Leavenworth, Atchison & St. Joseph).	Chicago..	20	20	22½	12½	22	18	23½
(Omaha & Council Bluffs)		20	20	25	25	25	18	23½
Missouri river p'nts (Kansas City, Leavenworth, Atchison & St. Joseph).	Mississippi river p'nts.	15	15	17½	7½	21½	13	13½
(Omaha & Council Bluffs)..		15	15	20	16¾	17½	13	18½

Rates on Corn and Wheat from Certain Kansas and Nebraska Points to Chicago and Mississippi River.

From—	To—	Rates in cents per 100 lbs. Chicago, Ill. Corn.	Chicago, Ill. Wheat.	Mississippi river points. Corn.	Mississippi river points. Wheat.
Kansas points—					
Gardiner		21	27	16	22
Thayer		22½	30	17½	25
Caldwell		25	36	20	31
Nebraska points—					
Millard		20	25	15	20
Central City		22½	30	17½	25
Ord		25	33	20	28

The rate on corn to New York estimated and averaged by States is, from Ohio 15½, Indiana 18½, Illinois 22, Missouri 33½, Iowa 35, Kansas and Nebraska 40½ cents per 100 pounds.

The rates, and extent to which they are grouped, between Kansas and Texas points, are shown as follows:

From—	To—	Dist. Miles.	Wheat. Cents.	Corn Cents.	Meal & flour. Cents.
Junction City, Kan.	Houston, Tex.	769	46	46	51
Chetopa, "	Denison, "	250	46	46	51

Grain rates from Nebraska to Minneapolis and St. Paul are the same as to the Mississippi river and are the same to Boston through Minneapolis and St. Paul as through Mississippi river, east side, points.

From South Dakota they are the same as from Nebraska for corresponding distances.

The cost of carrying grain (ocean carriage) to Liverpool, England, is about the same from South America as from Chicago, Illinois.

The corn belt of Nebraska includes less than half the State and extends from the Missouri river west, an average distance nearly 200 miles. The average distance which corn is carried from interior stations of the State to the Missouri river does not exceed 125, at most 135 miles, and to the Mississippi river 425. Some corn is grown west of the corn belt, but it is in the main used there or carried west.

The surplus corn of Kansas mainly grows in the east three-fifths of the State, and is carried an average distance of not more than 425 miles to St. Louis and other Mississippi river points. It grows in comparatively small quantities near the western border of the State, and some is carried more than 700 miles to the Mississippi river, but the surplus in western or southwestern Kansas is inconsiderable and is mainly shipped farther west and south.

The distance between the Missouri river and Mississippi, east side, through Omaha and Council Bluffs is 300 miles. It is more by some lines, but the longer lines between the rivers are carriers east relatively shorter distances to Chicago.

The distance, between the rivers, from Kansas City to St. Louis is 280 miles. North of St. Louis over lines from Atchison, Leavenworth and St. Joseph the distance between the rivers is considerably less than 280 miles.

From Missouri river at Omaha and Council Bluffs to Chicago is 490 miles, which is the estimated distance from Missouri river points, though it is but 458 miles from Kansas City.

From the Mississippi at East St. Louis it is 1,065 miles to New York. Over some routes through Chicago the distance is less to New York from the river at some other points than from East St. Louis.

From Chicago to New York the distance is 912 miles by the short line, the Pennsylvania R. R. The average distance which surplus corn is carried to New York is approximately from Ohio 650, Indiana 825, Illinois 1,000, Iowa and Missouri 1,250 and Kansas and Nebraska 1,535 miles.

The companies operating some of the lines between Chicago and the Missouri river have proprietary or owned lines under separate corporate control extending into the Territories and to the Mexican border. The lines of some of the carriers extend no farther east than the Missouri river.

The transportation charges on corn and other grain from Nebraska and Kansas are, from Kansas 15 to 25 per cent. lower, and from Nebraska 20 to 35 per cent. lower than the established and published rates which were there in force previous to the enactment of the law to regulate commerce. A practice of giving rebates was then in use, and shipments were habitually made below the established and published rates. Rebates were made sometimes, and to some persons as low as one cent, and to others as much as 13 cents on the 100 pounds. More than one-third of the published and legal rate was remitted to some shippers, while others paid in full. The rates actually paid under the rebate practice to favored shippers were estimated to average four cents less than established rates on all the grain shipped, but the rates paid at any station were rarely below those now in force.

The grain rates open and established from the Missouri river now grouped east and west of the river from thirty to sixty miles have generally been the same as now, 20 cents to Chicago since 1882. The river rate was not until recently extended west. Rebates were frequent on occasions of severe competition, which considerably reduced the 20 cents.

During the last twelve years or more the Trunk lines or principal railway carriers between Chicago and the Atlantic seaboard have established the same scale of transportation charges and up to August 1, 1889, their charges were the same on all grain, flour, and meal. In 1875 the charge from Chicago to New York was forty cents per hundred pounds. From May to December of 1876 the rate was 20 cents. It was 30 cents in the six months of Lake navigation in 1877. It was, in 1878, generally 25, but at times as low as 20, and fluctuated between 15 and 35 in 1879.

Since 1879 these grain rates have been made as follows:

Date.	Cents per 100.	Date.	Cents per 100.
1880, Jan. 1	40	1884, Jan. 14	30
Mar. 1	35	Mar. 14	20
April 1	30	" 21	15
Nov. 22	35	June 24	20
1881, April 1	30	July 21	25
" 11	25	1885, Mar. 10	20
" 18	30	Nov. 23	25
June 8	25	1886, Dec. 20	30
June 15	15@20	1887, Mar. 23	25
Sept. 26	12½@20	1888, Jan. 8 or 15	27½
Oct. 10	12½@15	Mar. 8 or 15	25
Nov. 1	20	Oct. 10	20
Dec. 9	12½@20	Dec. 15	25
1882, Mar. 13	25	1889, July 13	20
Dec. 1	30	Aug. 1, wheat	25
1883, April 19	25	corn	20
Nov. 26	30	1890, May 26, oats	20
1884, Jan. 5	20		

Some reduction of these Trunk line charges as given above was made through rebates before the Act to regulate commerce.

Since the Act was passed corn has been frequently carried under tariffs of short duration from stations west of the Missouri river for considerably less than is now charged for the same service.

Under a tariff kept in force all of January, 1888, by the Chicago & North-Western Railway Co., and controlled lines they carried corn from stations on their lines in Nebraska to Rochelle, Ill., 100 miles east of the Mississippi river for 11, 13, 14 and 15 cents when the corn was to be forwarded to New York. From the same stations in Nebraska said company and controlled lines now charge from some 4, some 2, and from others 1½ cents more to the Mississippi on corn to be forwarded to New York. In one case the corn was shipped and billed to Rochelle and in the other to Mississippi river, east side, with proposed final destination of both indicated on the bill. Other carriers had in force tariffs making even lower rates from Nebraska and Kansas stations in the winter of 1887 and 1888.

Both the Rock Island & Pacific and the Chicago, Burling-

ton & Quincy, with their Kansas and Nebraska controlled lines carried corn from their Kansas and Nebraska stations in February, 1888, at five cents below present rates.

In the summer and in November of 1888 and again in January, 1889, corn was shipped and billed by the carriers from Nebraska and Kansas points through Chicago to Cincinnati for 25 cents, the billing indicating that 17 cents was the proportion of the roads west of Chicago. The billing directed in some cases that the routing east of Chicago might be by either of two lines named in the billing. The freight was diverted at Chicago and went over neither. In some cases no connecting line was named over which the freight was to be forwarded east of Chicago, and the carrying was to Chicago for three cents less than is now charged by the same roads.

In the last weeks of February, 1888, the Chicago & North-Western Company and companies of its system, together with the Pennsylvania Company, had in force a joint through tariff from Nebraska stations to New York over the lines of the North-Western system to Chicago, thence over lines of the Pennsylvania system to New York. Under this tariff corn was carried to New York from Nebraska for 36½ cents, which was 3 cents less than the present charge over the same lines through Chicago and 1½ cents less than the charge by any route or combination of routes.

The Chicago, Burlington & Quincy and the Rock Island systems, with eastern connections, had in effect in February, 1888, similar tariffs providing for through carriage at the rates which were in force over the North-Western and Pennsylvania Company's lines.

The relative cost, debt, capital, business, receipts and expenses of railways west and east of Chicago are approximately shown in the following

Summary of roads named:

Summary of Reported Mileage Operated, Cost of Road and Equipment, Capitalization and Business for Year Ending JUNE 30, 1889.

NAME OF ROAD.	Mileage operated.	Cost of road and equipment per mile of road.	Capitalization. Capital stock per mile of road.	Funded debt per mile of road.	Total capital per mile of road.	Per centage of cost of road and equipment to capital.	Earnings pr mile of road	Operating expenses per mile of road.	Percentage of operating expenses to earnings.	Aver'ge tons carried one mile for each mile of road operated.	Average receipts per ton per mile.		Average cost of carrying one ton one mile	
Western Lines:	*Miles.*	*Dollars*	*Dollars*	*Dollars*	*Dollars*	*Per cent.*	*Dollars.*	*Dollars.*	*Per cent*	*Tons.*	*Cents.*	*Mills.*	*Cents.*	*Mills.*
Atchison, Topeka & Santa Fe R. R....	3,026.26	45,719	37,637	35,398	73,035	62.61	5,263	3,452	65.28	249,494	1	289		866
Chicago, Santa Fe & California R'y.	516.70	95,654	43,040	49,521	92,561	103.10	6,024	4,792	79.56	507,389		895		619
Chicago & Alton R. R.....	848.98	51,117	29,126	17,675	46,801	108.45	8,984	5,366	59.40	582,411	1	002		564
Chicago, Burlington & Quincy R. R...	4,859.01	33,756	16,016	20,483	36,499	92.49	5,351	3,585	66.99	355,489		997		617
Chicago, Milwaukee & St. Paul R'y....	5,678.15	32,386	10,827	21,797	32,624	99.27	4,504	2,778	61.70	285,467	1	067		648
Chicago & North-Western Railway...	4,254.92	37,861	17,602	24,732	42,334	89 43	5,988	3,589	59.93	417,904	1	013		575
Fremont, Elkhorn & Mo. V'ly R. R..	1,298.77	37,436	27,150	15,382	37,340	100 40	2,408	1,429	59 34	91,763	1	776		986
Chicago, Rock Island & Pacific R'y....	3,257.10	38,108	28,879	16,560	45,439	83.87	5,015	3,536	70 57	317,275	1	047		668
Chicago, St. Paul & Kansas City R'y..	829.38	52,847	18,346	34,342	52,688	100.29	3,581	2,741	74.39	237,889		948		641
Union Pacific Railway.....	1,821.43	91,235	33,326	71,840	105.166	86.53	10,239	5,787	56.51	604,946	1	166		618
Illinois Central R. R.....	2,275.10	34,432	22,019	23,216	45,235	76.19	5,902	3,393	57.49	466,359		839		469
Dubuque & Sioux City R. R.....	599.59	32,897	15,988	17,115	33,103	99.38	3,058	2,309	75.50	157,606	1	283		875
Total.....29,265.39					Average for the above Western Lines....					350.081				
Eastern Lines:														
Baltimore & Ohio R. R.....	1,753.99	77,210	31,333	78,224	109.557	70 47	11,599	8,143	70.20	1,281,439		637		439
Delaware, Lackawanna & West. R. R.	778.98	137,013	64,153	61,879	126.032	108.62	24,909	15,101	60.62	1,959,461		983		581
Lake Shore & Michigan Southern R'y.	1,409 55	66,862	41.196	35.226	76.422	87.26	12,820	8,060	63.02	1,264,023		632		432
Michigan Central Railroad.....	1,550.94	53,674	27.152	29,468	56.620	94.82	8,643	6,316	70.54	782.593		702		490
New York Central & Hud. River R. R.	1,420.64	165,092	78,712	85,041	163,754	100 74	24,609	15,874	64.50	1,957,675		712		549
New York, Lake Erie & Western R. R.	1,632.06	221,667	91,952	132,624	224,576	98.73	19,472	12,091	64.89	*2,232,076		*672		*407
Pennsylvania Railroad.....	2,432.95	136,602	72,237	69,677	141,914	96.26	23,724	16,161	68.11	2,397,852		685		486
Total.....10,979.11					Average for the above Eastern Lines....					1,611,894				

Percentage of the average tons carried one mile over each mile of road of Western Lines operated to the average of Eastern Lines is 21.72 per cent.; or, in other words, the Eastern Lines carried 4.60 times as much as the Western Lines.

* These items are for the New York, Lake Erie and Western Railroad proper, covering 1,035.75 miles of road.

To a witness residing in Iowa, the General Manager of the Burlington & Missouri River Road put this question at Omaha: "I would like to ask you if you consider that it is fair for the railroads leading from Chicago into this country to be permitted to earn a fair rate of interest on a fair valuation of their property at the present time and to gradually be enabled to improve their property as the increased tonnage and requirements of the people demand?"

Answer: "I say that if the railroads on a fair average of what they actually cost—I say they should have a compensation for their services, interest on the money, and a reasonable compensation."

The witnesses residing in Kansas and Nebraska answered the same inquiry in the same way.

The cost of re-producing Union Pacific lines from Omaha to Ogden and from Kansas City to Denver, as estimated by the Inspecting Engineer for the United States Pacific Railway Commission was per mile $25,470; with terminals added, $35,790 per mile.

The cost per mile of the line from Denver to Cheyenne was $19,898, and with terminal cost added $24,593 per mile.

The cost of re-producing these roads in the prairie country of Kansas and Nebraska would be very much less.

The lines of the Union Pacific and some other companies extend no further east than the Missouri river. Other companies with lines west of that river are under separate corporate control, but their capital stock is owned by companies with lines extending west from Chicago, in connection with which the owned lines west of the Missouri are operated.

The corn crop of 1889 exceeded in bushels and acreage that of any previous year, but was less in proportion to population than the crops of 1880 and 1885. The rate of average annual increase since 1879 has exceeded by ten per cent. the average growth of population for the same period. The estimate in bushels was 2,112,000,000 and the acreage 78,000,000 in 1889.

The acreage of all our crops of cereals, cotton, tobacco, rice and sugar, including acreage necessary to produce such of said articles as we import, is less than 170,000,000 acres.

The displacement of corn by oats, and other substitutes as food for domestic animals, is not much more than compensated for in its extended use in the manufacture of glucose and as a substitute for barley. There is no increasing foreign demand to be supplied by us and the price is the lowest in 28 years.

The estimated farm value of the last crop ranged from 15 cents per bushel in Kansas and Nebraska to 32 cents in Ohio; the price in different States and localities varying in something like the proportion of cost of transportation to eastern markets.

The cost of producing corn in Kansas and Nebraska is from 14 to 20 cents, varying with the degree of intelligence and economy practiced, and, with the cost of delivery by wagon at the railway station, is estimated to average not less than 18 cents per bushel.

The average yield in the surplus corn States for the past 5 years was per acre, in Nebraska 31.9, Iowa 31.6, Ohio 31.4 Indiana 30.2, Illinois 28.6, Missouri 27.7, and in Kansas 26.1 bushels.

[The acreage yield and farm values of crops are based on estimates of the Department of Agriculture; the population since last census is taken from estimates of the Government Actuary.]

The cost of production includes rental or use of land, and substantially the only difference in this cost in these corn States is in the value of the land.

This item of cost, which is about 5 cents per bushel in Kansas or Nebraska and 10 cents or more in Ohio, is $\frac{1}{3}$ of the cost in any of the surplus corn States.

The wheat crop of 1889 was in bushels 490,000,000, or about $\frac{1}{4}$ as large as corn. It was little above the average of the eight previous years, but yet furnished a large export. A surplus is grown in all the surplus corn States, and in Michigan, Wisconsin, Minnesota and in the Dakotas.

The cost of handling and transporting wheat and flour is substantially the same as corn and its products. Wheat per bushel is worth nearly two and a half times as much as corn.

Oats per 100 pounds are slightly more valuable than corn, the manner, cost and risk of handling and carrying the two grains, corn and oats, are substantially the same. The oat crop in bushels is one-third as large as corn. A surplus is grown in all the surplus corn and wheat States.

The corn surplus States west of Indiana produce the large surplus of cattle and hogs for slaughter. Cattle in large numbers are carried into and through these States from the grazing country beyond and from the Indian Territory and the State of Texas. The cost of fatted cattle and hogs is so dependent on the price of corn that they, in common with corn and other staple products of the farm, command only the prices of a greatly depressed market.

The Southern States are large consumers of food products shipped from the surplus producing region by rail, and when uninfluenced by water competition, at rates very much higher than rates paid for like distances to eastern markets.

The present rate by boat and barge from St. Louis to New Orleans does not exceed 10¼ cents per 100 pounds, including insurance, and in the first four months of this year, 5,500,000 bushels of corn were carried at an average rate of less than 7 cents per bushel to New Orleans, chiefly for export.

Shipments for local consumption and distribution to intermediate stations in Pennsylvania are largely made at Philadelphia rates, in Maryland at Baltimore rates, in New Jersey and New York at New York City rates, and in the New England States at Boston rates.

The rate to Boston on products for export is the same as to New York City. They must be so billed at any point from which the shipment and billing is through to Boston. When freight is consigned to Boston at the local consumption and distribution rate the amount of difference between the local and export rate is remitted or refunded on proof that the freight was for export.

The annual export of wheat, corn and oats, through all our ports has been for ten years as follows:

Years.	Exports of wheat and flour in bushels	Exports of corn and meal in bushels.	Exports of oats.
1880	180,304,180	99,572,329	766,366
1881	186,321,514	93,648,147	402,904
1882	121,892,389	44,340,683	625,690
1883	147,811,316	41,655,653	461,496
1884	111,534,182	46,258,606	1,760,376
1885	132,570,366	52,876,456	4,191,692
1886	94,565,793	64,829,617	5,672,694
1887	153,804,834	41,368,584	440,283
1888	119,625,344	25,360,869	332,564
1889	88,600,742	70,841,673	624,226
Total	1,337,030,660	580,752,617	15,278,291
Average	133,703,066	58,075,261	1,527,829

Previous to the Act to regulate commerce the rates to the seaboard were frequently lower on freights for export than for domestic consumption and distribution. The carriers claim that if permitted they would carry lower for export.

The Chicago grain rate to Boston is 5 cents higher than to New York—a difference of 25 per cent. This 5 cents differential or arbitrary has long existed. With rates on a distance basis the difference would be about 1 cent, the distance to Boston being about five per cent. greater.

The division of this 5 cents arbitrary between the lines through Albany to Boston is 4 cents to lines west and 1 cent to lines east of Albany. The carriers west of Albany are the same, whether the freight goes to Boston or New York, and they receive 4 cents more for the same service, the same haul, when carrying to Boston than when carrying to New York.

When this 5 cents arbitrary first came in use Boston and New York rates were so much above present charges that the proportion of difference was very much less than now. On freight from Buffalo the differential on Boston business is 2½ cents.

The division is 1 cent to roads east of Albany and 1½ cents to the lines west.

Before the Act to regulate commerce was in force the practice of lower charges for longer distances over the same line and under similar circumstances was in very general use.

Such charges were made on some occasions as a matter of favoritism, on others because of actual or assumed transportation necessities. They are yet made on some lines where it is claimed that the circumstances and conditions make it lawful under the fourth section of the Act. Food products are not carried under this practice of charges from the surplus producing region to eastern markets.

In connection with the inquiry whether a reduction of rates is prevented or hindered by reason of the operation of any provision of the Act to regulate commerce, witnesses on behalf of the railroad companies testified that the provisions of section five of the Act making it unlawful for common carriers to enter into agreements or combinations for pooling freights or dividing earnings of competing railroads was a hindrance to the maintenance of stable and uniform rates. Claim was made upon testimony introduced that the chief cause of the low price of food products, especially corn, the past winter, was the extraordinary volume of the last crop and the enormous amount put upon the market; that the products were obliged to seek purchasers and the latter did not compete for the products; also that there was a greater demand for ocean carriage than there was at hand for the service, which occasioned a large advance in the price of ocean transportation. And it is now claimed that this is shown to be true by the recent increase in the price of corn since the price of ocean carriage has decreased at the same time with a decrease in the amount of corn transported to the seaboard while there has been no change in the rate for the inland transportation.

In the progress of this investigation much testimony has been taken and many facts ascertained relating to transportation charges and facilities. But the above findings embrace, it is believed, all the ascertained facts pertinent to the alleged excessive freight charges on food products.

The resolution directing this investigation to be made correctly affirms that the Act to regulate commerce makes it the duty of the Commission to enforce the provisions of the Act requiring transportation charges to be reasonable and just.

In this respect the direction given in the resolution added nothing to the duty which the law had imposed on the Commission. The direction is equivalent to complaint made through the Senate that the rates in question are excessive. This complaint is repeated through the Department of Agriculture in the announcement of its Secretary, "that many roads are overtaxing their constituents in an effort to secure dividends upon a total capital and bonded debt, a portion of which is purely fictitious." In this alleged overtaxing by many roads the Secretary finds one of the causes of the "universally admitted" "severe agricultural depression."

Twenty-five or twenty-six years ago the Government paid three dollars per bushel for corn in east central Nebraska, and from ten to fifteen cents per pound near its western border. The price paid by the Government for the corn was chiefly the cost of the farm or freight-wagon haul from southeast Nebraska, then producing a large surplus. The accounting offices of the Government afford abundant evidence that both the price and the transportation charges were complained of as excessive. The price of the pound then is now the price of the bushel at the same place, and the cost of carrying the bushel 1,700 miles to New York is 24 cents. Recurrence to these familiar facts and changed conditions will suggest possible delays in providing adequate transportation facilities at rates so satisfactory that they may not be the subject of complaint.

That the prices which agricultural products now bring do not secure to the producer his equal share of the general prosperity is apparently not disputed. In seeking a remedy for what is to them an unbearable evil, the growers of crops are confronted with the fact that much of the wheat, $\frac{2}{3}$ of the cotton, some of the tobacco, and all the corn for which there is a foreign buyer, is exported; and that all the grain, cotton and tobacco, including that exported, all the rice grown and imported, all the sugar grown and beets to make all we consume, require less acreage than is included in the State of Texas. Recognizing these facts the cultivator of land in Iowa, Nebraska and Kansas, discovers no satisfactory or immediate relief for alleged excessive transportation charges

in the sometimes suggested "diversification," wider range of industry, greater variety of production. The promised remedy through the "truck patch" is too remote while every man within five hundred miles has a truck patch of his own.

The prices of grain and meats are regulated in a common market and are but little influenced by the fact that such products are produced in different localities or pay different rates of transportation. In the average of years the difference in the cost of producing corn in the corn States west and the corn States east of the Mississippi river is less than 5 cents per bushel, while the transportation charges from the States west of that river taken together, are higher by more than 10 cents than the average of the States east of it. And from the corn crop of Kansas and Nebraska, after deducting transportation charges, there will be realized many millions less than a like quantity would bring to its producers in Illinois.

Transportation charges, reasonable or otherwise, always burdensome on heavy low-priced commodities, become more and more a matter of serious concern and apprehension as the shipper is farther removed from market. Iowa farmers make no impertinent inquiry when they ask why they should pay 7 cents a bushel more to market their corn than is paid by their Illinois neighbors. Seven cents to them is more than five millions of dollars on the year's surplus. Nor is it surprising that corn growers west of the Missouri should be urgent in demanding the reasons which require them to pay double as much as their neighbors in the corn States east of the Mississippi pay to reach a common market in which all must sell at the same price. There is nothing in these very proper inquiries to justify any imputation that they imply menace to the property rights of investors in railroad property. There is nothing to show that these agricultural communities are wanting in consideration for the property rights of others, individual or corporate. There is no such poverty in their sense of justice.

There may be differences of opinion and possible misapprehension as to the extent and measure of such investments and what is demanded by an equal measure of justice in

regard to them. The chief carriers from the surplus food-producing regions are the railway companies which have been the beneficiaries of the largest bounties, subsidies, grants and guaranties from the United States, the States, counties and localities. The cost of transportation over the roads of such companies as compared with charges on roads which have not been so favored has been disappointing.

The frequency with which the roads during long periods carry passengers at a half-cent or less per mile tends to the conviction that the usual charge of six times as much is excessive. When the roads have for considerable periods in successive years carried corn from Kansas and Nebraska for three, four and sometimes five cents less than existing rates and the officers of the roads testify that any reduction of such rates would make them unreasonably low some allowance is made by the corn grower and shipper for the possible bias of the witnesses. When freight charges on agricultural products are demanded which will under all circumstances pay operating expenses, interest on bonded debt or fixed charges, and in addition a dividend on the capital stock, and the shipper may not question the extent and good faith of such debt, stock and obligations, he does not recognize the justice of the demand, nor is his respect for such a rule of compensation increased by the fact that it may have high judicial sanction. Plain people believe that in so far as reasonable rates are measured by such fixed charges, obligations and railroad investments, these should be actual and in good faith.

Agricultural products can bear only the lowest possible rate which is reasonable. The Chicago, Santa Fe and California and the Chicago and Alton roads run side by side between Chicago and Kansas City. The Alton is capitalized at $46,000 per mile, the Santa Fe at $92,000; their rates must necessarily be the same. Must they be such as to yield income on the basis of the Alton's capital and obligations, or on the capital and obligations of the Santa Fe which is double as much? The bonded debt and capital of the Burlington and Missouri River in Nebraska is $37,000 per mile, and of the Fremont, Elkhorn and Missouri Valley, $36,000. They parallel on

either side of the Union Pacific, capitalized at $105,000 per mile. The bonded debt of the Union Pacific per mile is $71,840 and is nearly double both bonded debt and capital stock of either of the other two roads. The three must of necessity carry on the same terms. The bonded debt, saying nothing of the capital stock of the Union Pacific, is double its original cost, or the cost of replacing it with its $17,000,000 terminals. That road, like others similarly situated, is especially the creature of the Government. The Government authorized the financial obligations which now burden the road. Rates which would operate it and pay interest on its funded debt, saying nothing of dividends on capital stock, would in many instances amount to confiscation of the freight, and the rule of compensatory rates contended for cannot be accepted as a test of the lowest reasonable rate without many qualifications.

The preamble and resolution of the Senate and the resolution which led to their adoption imply that to be reasonable the rates on food products must be such as to enable the products to be marketed at actual cost of production. This basis or limit of compensation for transportation services will hardly stand the test of fair dealing. It would compel those who invest in or operate railroads to assume and bear the losses resulting from the improvidence, mismanagement or unprofitable employment of others. There are many considerations other than the cost of such transportation service which enter into the prices of all commodities, and while railroad charges may influence such prices they do not make or control them. To the extent that excessive rates contribute to unremunerative prices the roads may justly be held responsible for them and to that extent only. There is an excellent clay in Nebraska for making bricks, a useful and creditable industry. Bricks are much needed in New York. The people of Nebraska have a right to make them as well as a right to have them shipped to New York at reasonable rates. But it might be that when such reasonable rates were deducted from the price received the remainder would be less than the "actual cost of production." That would not necessarily make the rates unreasonable. Unfortunate it may be, but

still of necessity, the claims of the shipper must wait upon the rights of those whose services he employs and whose property he uses. The employees who run the train may have neither brick, corn, nor railroad investment, but they must be paid for their services. The road must be repaired and bridges mended. Actual and honest investment must receive fair reward. All this must be paid before the profits or actual cost of producers are paid unless the services and property of others are to be appropriated to the use of those who for the time may be engaged in an unprofitable business or disadvantageously located industry. We think it is true that at the prices which have at times prevailed since the gathering of the last crop, corn from the most distant fields could not be marketed at actual cost of production and pay reasonable rates. But the evil cannot be remedied without taking the services or property of men engaged in one business or employment and transfering them to those engaged in other employments. To make such transfer is a prerogative not to be exercised by any tribunal.

The standard of actual cost implied in the complaint made through the Senate is the full measure of fairly profitable investment in business pursuits. It includes more than is included in the compensation of the men who work and operate the railroad or whose incomes are derived from its fair earnings. The actual cost of productions of the farm includes the value of its use or rent, which is income on the investment, and as a rule this is based on the entire farm value, including the home. There is a world of compensation in home with its vine and fig tree, which is not much diminished if the vine is melon and the tree persimmon.

All grain and its products, including flour and meal, had been during many years previous to July last classed together and carried from Chicago and from St. Louis and other Mississippi points by all the carriers at the same rate per hundred pounds, to eastern ports and markets. The exceptions to this rule in the past fifteen years, if there were exceptions, were rare and of short duration. It was convenient, uniform, simple and easily understood. Its long continuance warrants

the belief that it was sanctioned by reasons just to both shipper and carrier. We are satisfied that substantial justice would be done by maintaining the same classification on all grain, so long in use by the railroad companies. On July 13, 1889, when the rate on all grain from Chicago to New York had been twenty-five cents for the previous seven months, the carriers reduced it to twenty, and two weeks later restored it to twenty-five on other grain than corn, which remained at twenty. All grain had in the last fifteen years frequently been as low, and often, when competition was severe, lower than twenty cents, but the generally prevailing rate was higher. The rates from Chicago and East St. Louis and from the Mississippi river on corn destined to eastern markets are substantially on the same basis. Twenty cents from Chicago and twenty-three from East St. Louis and the Mississippi but little exceed four mills per ton per mile and are not unreasonable rates.

Oats and corn are largely substitutes for each other, especially as animal food. Oats are slightly more valuable per hundred pounds and require a little more space than corn, but there is no substantial difference in their cost of handling and carrying or value of such service to justify their separate classification and rating. In the progress of this investigation the carriers east of the Mississippi river have reduced their charges on oats to the same basis with corn, and the charges now made on oats are reasonably low.

Wheat is less bulky than corn, but more than twice as valuable. The corn crop is much the larger, but a still larger proportion of it as compared with wheat is consumed on the farm without the use of rail transportation. Wheat is in considerable quantities twice moved, once as wheat, again in flour. The size of the two crops affords no criterion as to their relative movement or the volume of the railway traffic of each. Wheat is the one food product for which there is no fit substitute in American and European countries. It is the staple necessary of life. After cotton, it is our largest export to foreign markets. There it can be sold only in competition with wheat having the advantage of cheap ocean carriage and produced at the low cost common to South Amer-

ica, Russia and India. Wheat is as inexpensive to handle and low in cost of movement as any other grain, and of necessity is a traffic which will bear only the lowest reasonable rates and charges.

In nine out of the last fifteen years wheat and all other grain, flour and meal were at times carried at lower rates than rates now in force. They were so carried for three, four and six months in some years and these occasions were not confined to periods of lake navigation. Rates which are not so high as to invite reduction or to tempt carriers to frequent change better secure certainty and stability. To producers of food products these are scarcely less important than reasonableness. The frequency with which all grain, including wheat and flour has been carried from Chicago and east Mississippi river stations at less than twenty cents the annual betterments, improved methods, increased and increasing volume of business, and lowering in cost of operation, warrants the belief that some lower rate than 25 cents will be fairly remunerative. And while all grain might with justice, as we believe, be classed and rated together, still, in view of their moderate earnings, on corn and oats on the same lines, we do not think that 23 cents from Chicago and 26½ from the Mississippi river would yield the roads more than reasonable compensation for the service. Twenty-three cents from Chicago and 26½ from the Mississippi River to New York is a reasonable limit above which rates on wheat and flour should not be made. Any rate on wheat over any of the roads east or west of the Mississippi in excess of fifteen per cent. more than the rate on corn and oats is unreasonable.

The rate from the Missouri river to Chicago, 20 cents, has been the generally prevailing rate for the past eight years. The rate to the Mississippi, 15 cents, or 5 cents less than to Chicago, is called by the carriers a proportional tariff and is of recent origin. Similarly constructed tariffs to points further east and on a much lower basis than this east side Mississippi river rate have frequently been made by the carriers west of Chicago.

The lines of most of the principal carriers from the Missouri to the Mississippi river extend to Chicago. Such car-

sippi. Corn is many times less valuable and is so much less expensive to carry in like quantities that it would be much more profitable than packing-house products at the same rate. The rebates before the Act, and the very much lower rates frequently put in force since, fairly lead to the conclusion that existing corn and other grain rates, are so high as to encourage frequent and hurtful changes and to make reductions expedient and profitable to the roads, whenever necessary to secure the business. The abundant harvests and the growth of population on western lines to the grain fields and the country beyond have so multiplied customers with wants to be supplied as to cheapen the cost of serving them. We are constrained by all the facts to believe that any rate or greater charge from the Missouri river than 17 cents to Chicago, and 12 to the Mississippi, east side, is excessive and that the rates should be so reduced and adjusted, and a reduction of two cents should be made from all stations west of the Missouri river in Nebraska and Kansas—that is to say, the rates for the several stations in the States of Kansas and Nebraska to the Mississippi river and to Chicago to be reasonable should be reduced as much as two cents.

The same grain rates are made from a large group of Kansas points to a large group of Texas points. These groups cover a larger part of the Kansas grain-growing district and a district hundreds of miles in extent in Texas. The rate is 46 cents per hundred on corn and wheat and 51 cents on flour and meal for distances as short as 250 miles and the same for distances as long as 769. This is unreasonably high for the longer distances and grossly excessive and exhorbitant for the shorter. These charges should be reduced and made more reasonable of themselves and in their relations to each other.

Wheat and flour should bear the same rate, which should not be more than fifteen per cent. above the rates on corn and oats.

Rates on all grain other than wheat should pay the same rates as corn.

Grain rates from the Dakotas and Minnesota should be moderated and adjusted.

The average tons of freight carried over each mile of road on the lines east are more than four times as great as on lines west of Chicago. A comparison of tonnage over several lines east and west as reported by the companies shows the tonnage on western lines about twenty-two per cent. of eastern line tonnage. The reported cost, capital stock and bonded debt of the eastern roads are greater in about the same proportion of their greater tonnage than western roads.

Counsel representing the western roads in the progress of the investigation insisted that the rate of charges which a road may justifiably and reasonably make on its business largely depends upon how much business it has to do, and that the much greater tonnage on eastern roads indicated the much higher basis of charges necessary to be made and which might reasonably and lawfully be made on western roads; that every road has a right to live and must derive from the business it has to do a sufficient income to meet its obligations which are to operate its road, pay interest on its indebtedness, and a dividend on the capital stock; and that any rates which with other rates on the same road taken all together do not yield a revenue more than sufficient for these purposes are neither unreasonable nor unjust to the shipper. We have already shown that some qualification need be made to the rule here laid down as the measure of reasonable rates. The rule insisted upon would involve the right to increase rates as often as a new road was built where roads were already ample for the business. There are eight roads or lines carrying between Chicago and Kansas City; a less number might do the business as well and cheaper. If eight more were built the rates might need to be doubled if all roads constructed have a right to such income as will meet the obligations of the Companies owning them.

It can hardly be questioned that roads with a large tonnage, full cars, and full trains, can carry at lower rates. Western roads in reporting their cost of operation with much unanimity show the lower cost on roads with *larger* tonnage, but the exceptions to the rule on eastern roads show how unreliable

reported or estimated cost of service must be as a basis for making rates. The different methods for stating the cost and items to be charged, the character of the freight moved, relative local business at high rates, and through business paying low rates, all need to be considered, and many other things taken into account in any reliable estimate of cost of service.

The Pennsylvania Railroad with double the tonnage, reports higher cost of service per ton per mile than the Baltimore & Ohio. The Delaware and Lackawanna, with nearly three times as much carried over every mile of its road, reports higher cost than the Michigan Central. The New York Central carries over every mile of its lines more than four times as many tons as the Illinois Central, and reports its cost for carrying each considerably higher than the Illinois Central.

In contending for the very much higher basis on which it is claimed western roads may lawfully make their charges because of their much less tonnage, counsel for western carriers take no account of their correspondingly less reported debt and obligations in comparison with eastern roads. Under the rule of compensation which western carriers claimed a lawful right to make, eastern roads with reported cost, tonnage and obligations four times as great, might lawfully make the same rates as western roads. The New York, Lake Erie & Western with a funded debt of more than $132,000 per mile could make rates on the same basis with the Chicago & North-Western or the Chicago, Burlington & Quincy, with funded debts but slightly exceeding $20,000 per mile for one, and $24,000 for the other. The funded debt of the Illinois Central but little exceeds $23,000 per mile, and the Chicago, Rock Island & Pacific less than $16,000. That of the New York Central is $85,000. Their reported tonnage cost and capitalization are nearly in like proportion. The reported cost of service is less on the Illinois Central and more on the Rock Island than on the New York Central. If it be conceded that the three may lawfully make rates which will enable them to operate their roads, pay interest or fixed charges and some income to investors in the roads, then these and other western roads may not lawfully make higher

rates on a like kind of traffic than the New York Central and other eastern roads may lawfully make.

In determining what is a reasonable rate many things need to be considered which apparently are purely arbitrary. Let it be conceded that roads extending beyond the grain fields are entitled to legitimate earnings. What are these legitimate earnings and how are they to be apportioned? The Atchison, Topeka & Santa Fe road runs out of the Kansas grain district 250 miles west of Atchison and Kansas City. It extends on a thousand miles through an undeveloped and partly barren country. What part of the cost of its development may be imposed on the people of Kansas in grain rates which are to be reasonable and just? The Fremont & Elkhorn Valley road is 700 miles long, but 125 miles takes it out of the Nebraska corn belt, beyond which the traffic is light. What part of the whole burden of maintaining the roads must the corn pay? How much shall be apportioned to corn and agricultural products and how much to the machinery used? How much on the necessaries and comforts used?

We think no better rule applicable to the matter under investigation than that applied by railroads themselves, in accordance with which rates are so adjusted as to secure the largest interchange of commodities. This rule is approved by its frequent application in the movement of Western grain through the voluntary action of the roads. Put such a rate on corn as will encourage and warrant its movement if such a rate is fairly remunerative. While rates should not be so low as to impose a burden on other traffic they should have reasonable relation to cost of production and the value of the transportation service to the producer and shipper. In the carriage of the great staples which supply an enormous business, and which in market value and actual cost of transportation are among the cheapest articles of commerce, rates yielding moderate profit are both justifiable and necessary. The rates which we have determined upon as reasonable have been arrived at on this basis. They are from 50 to 80 per cent. higher in proportion to the service rendered than the rates east of the Mississippi if estimated on a distance basis.

Formal complaints were made to the Commission before this investigation began, involving the reasonableness of freight charges on cattle and hogs for slaughter, and on meal and other corn products. These complaints have been answered—the subjects have been fully heard and investigated, and will be disposed of by decision in the formal complaints.

In the progress of this investigation it was urged that the five cents on grain to Boston over the rate to New York was excessive, and proof was made that this differential had been long maintained—first established when rates were so much higher than those now in force—that it amounted to about ten per cent. while now it amounts to 25 per cent.; that the principal carriers to New York also carry to Boston and that 4 of the 5 cents differential are absorbed by or included in the charges of the roads west of Albany whose charges to Albany on freight going to New York are 4 cents less than on that going to Boston. It was further urged that a lowering of this differential would, by so much, reduce the charges on food products, consumption of which is large throughout New England. This question is now pending on formal complaint before the Commission and awaits its decision.

In addition to the direction to ascertain and report whether the rates in question are reasonable or unreasonable, the Senate resolution further directs the Commission to investigate the allegation that by reason of excessive rates the surplus food-producing region finds itself unable to market and obtain for its food products actual cost of production and further to ascertain and report whether a reduction of such rates is hindered by reason of the operation of any provision of the Act to regulate commerce and whether a more stringent enforcement of the Act is practicable and would remedy the evils complained of.

The evils complained of are the alleged excessive freight rates, and the remedy to be applied is the reduction of such as are unreasonable. Both have been considered in this opinion and report. The purpose of an investigation of the complaint that farmers cannot obtain cost for food products

is to the end that excessive rates might be corrected. This correction will be made, so far as may reasonably be done as the result of this investigation by an order of the Commission in conformity with its determination herein set forth.

It may be accepted as true that prices for farm products are not fairly remunerative and that for some of these products, such as corn farthest removed from market, prices are below cost including rental or use of land. The extent to which this is caused by freight charges, excessive or otherwise, is not so apparent and can only be determined by ascertaining the extent to which rates make prices. The cost of an article at a particular place ordinarily is one chief, if not controlling element, in fixing the price of the article at such place. And the price paid for Nebraska corn by the buyer in eastern markets is in the larger part paid for transportation charges. But the prices and values of agricultural or other commodities are influenced in so many ways and so largely depend upon economic and commercial conditions that any estimate of the relative influence of the causes contributing to high or low prices must be largely arbitrary or involve so much of speculation and theory as to be unsatisfactory.

The reasons usually assigned for the prevailing very low price of corn are excessive cost of railway service and excessive production. In the two months last past there has been an increase in the price which could hardly result from the very slight reduction in rates made in February and limited to Kansas and Nebraska. The Agricultural Department estimates a falling off in the value of the last year's corn crop in the three months from December to March last amounting to more than thirty-four millions of dollars partly because of high cost of transportation. The only change in rates during the three months was the slight reduction in February. In past years corn was higher in price when railroad charges were greater, and as well in years when the crop was greater than now in proportion to population as when it was less.

Agricultural depression is scarcely more severe in the distant west than in the east, where railroad rates are comparatively an inconsiderable part of the cost of reaching the

markets. Moderate rates on grain from long distances have taken from the eastern farmer some of the advantages which his proximity to best markets formerly gave him.

The provision of the Act which is most frequently alleged to hinder a reduction of rates for long distances is the fourth section, forbidding under similar circumstances a higher charge for a shorter distance. An intelligent and well informed witness who had advocated a modification of the section thought it might interfere with railway companies who were always ready to freely contribute their services in relieving their customers during crop failures, destruction by insects, or in periods of like misfortune. Or it might, he believed, be a hindrance to a more distant State reaching a market with an inferior or partly damaged crop of grain, but he was unable to indicate how under present conditions, it prevented any reduction the roads were willing to concede.

The most frequent objectors to this section are the railway companies that claim the largest discretion in fixing charges and formerly favored localities and shippers who paid less than the legal rates paid by their neighbors and business competitors. There is nothing in this provision which prevents the roads from imposing the same freight charges on shorter distance traffic which is not found in the common law requiring reasonable rates. They do in fact make the same charge for considerable distances east and west of the Missouri river. It has been shown in this proceeding that the same rates are made from Kansas for short and long distances to Texas which are held to be excessive and illegal, but they are not made illegal by the 4th section of the Act. Taking the two entire States, Iowa pays as much within 5 cents per bushel on corn as Nebraska, and this difference or advantage in freight is partly lost by the difference in cost of production. To put the higher charge on the shorter distance State is to compel a change of burdens which, if the law should authorize, justice would forbid. The margin of profit on food products is too small to justify the imposition on any part of them of other than its own necessary burdens, and before the higher charge can be

imposed on a shorter distance State, it will be necessary to repeal the 4th section of the Interstate Commerce law, and the common law as well.

Before the Act to regulate commerce, grain and other food products for export were carried from the place of production to the foreign market on through bills of lading at one through rate, of which the roads accepted as their part for inland carriage less than they received for carrying a like kind and quantity of freight from the same point of origin and consigned locally to the port of export. This practice has been continued through some ports, but was held by the Commission to be illegal to and through the port of New York. It was claimed during this investigation that the law so interpreted was a hindrance to the reduction of rates on grain and other products for export. It was said in support of this claim that imports would not enter where there was no return freight for the ocean carriers, and that roads could and would carry at very low rates to their terminal ports, and thereby induce entries of goods to be carried over their lines. The manner of conducting this traffic in the past warrants the belief that the roads, if permitted, would carry commodities for export at reduced rates.

It has been held by this Commission and also by the courts that railroad companies are not compelled to make through lines at through rates with connecting lines in the absence of any provision of law to establish such through lines, or fix the terms on which they are to be maintained. Such through lines are essential to long distance transportation at reasonable rates, and the omission of Congress to make the necessary provision for them may enable the carriers, by discontinuing or refusing to establish them, to defeat in part the purposes of this investigation.

This Commission therefore renews the recommendation made in its annual report to Congress in December, 1888, and again in December, 1889, that the third section of the Act be so amended as to make provision for through carriage at through rates over connecting lines.

THE MANUFACTURERS' AND JOBBER'S UNION OF MANKATO, MINNESOTA, *v.* THE MINNEAPOLIS AND ST. LOUIS RAILWAY COMPANY, THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, THE KANKAKEE AND SENECA RAILROAD COMPANY, AND THE BURLINGTON, CEDAR RAPIDS AND NORTHERN RAILWAY COMPANY.

Case submitted, December 17, 1888.—Decision filed, June 14, 1890.

Transportation charges are required to be relatively reasonable as well as reasonable in themselves, to prevent unjust discrimination between localities. A locality not widely dissimilar in situation and in respect of the transportation service of the same carrier to other localities where lower rates are given, is entitled to rates that bear a just relation to the lower charges made.

Equality in charges is required under circumstances and conditions substantially similar, and relative equality is necessary in the degree of similarity.

When a carrier engages in transportation for which, by reason of competitive conditions or for purposes of its own, it receives low rates for some patrons and at some localities, it accepts the legal obligation to give impartial services to other patrons and at other localities that sustain similar relations to the traffic.

The generally recognized principle that cost of carriage is in inverse ratio to distance, and that therefore the charge per ton per mile should diminish with distance, is not a rule required by the statute, and is subject to qualifications and exceptions.

Upon complaint by dealers at Mankato, Minn., that rates from Chicago to Mankato, should be no higher than to Waterville, Minneapolis and points allowed like rates.

Held, That in view of the circumstances and conditions existing, a somewhat higher charge to Mankato is not unlawful, but that a difference of twenty per cent. or more on the respective classes, charged when the complaint was filed, is excessive, and that a difference of ten per cent. on the several classes is reasonable and should not be exceeded.

E. M. Pope, for Complainants.

J. D. Springer, for Defendants.

REPORT AND OPINION OF THE COMMISSION.

SCHOONMAKER, *Commissioner:*

This case was first heard by the Commission at St. Paul, on the 16th and 17th days of September, 1887. On the 28th day of October, 1887, the respondents put in effect a tariff changing the rates to Mankato to the same basis as the rates to Waterville and the other points that had more favorable rates. A memorandum was filed by the Commission on the 21st day of November, 1887, setting forth the fact that the rates had been changed as desired by the complainants, and that no decision of the questions raised was therefore necessary. These rates, as changed, continued in effect until the 4th day of June, 1888, when they were again changed to the former figures. A new complaint was thereupon filed by the complainants on the 13th day of November, 1888. The answer of the defendants to the new complaint was filed on the 17th day of December, 1888. No new testimony was taken by either party, but a stipulation was filed to the effect that the case should be heard and decided upon the testimony given on the original hearing. An opinion was prepared in April, 1889, upon the facts then existing, but for reasons not necessary to mention was not issued. The rates have fluctuated more or less since that date, and for some time have been low, and relatively on an apparently fair basis.

The complaint charges that the defendant roads, which unite in making through rates from Chicago to Minneapolis and to intermediate points, discriminate against the dealers and traders at Mankato by charging higher rates to that city than to Minneapolis, and to points east of Waterville to Red Wing (the distance being less to Mankato from Chicago than to Minneapolis and to Red Wing respectively).

The complainants ask that the defendants be required to so adjust their tariffs from the city of Chicago and other points that their rates to the city of Mankato and all other points west of Waterville, on all classes of freight, shall be no higher than the rates established by said companies from Chicago and other points to Waterville, and to points east of Waterville to the city of Red Wing, and to points north of

Waterville to the city of Minneapolis; and to so adjust said rates that the city of Mankato shall be charged no higher rate per ton per mile than is charged to Waterville and other points on said line of road at less distance than the city of Mankato from Chicago or other points of origin.

The answer, in substance, sets forth that the line of the defendants is the longest line of several competitors between Chicago and Minneapolis; that the rates under which traffic is moved between Chicago and Minneapolis and the intermediate points mentioned in the complaint are established by the other lines engaged in the competitive business; and that the defendant line is obliged to accept those rates or to withdraw from the business.

The facts, so far as they are material to the case, are as follows:

The several defendant roads, by arrangements between them, constitute a through line, and carry traffic on joint rates, between Chicago and Minneapolis and the various intermediate points. The length of the line from Chicago to Minneapolis is 520 miles. The village of Waterville is a point on the line 455 miles from Chicago and 65 miles from Minneapolis. At Waterville the line of the defendants is crossed nearly at right angles by the Wisconsin, Minnesota and Pacific Railway, a road that is controlled and operated by one of the defendant roads, the Minneapolis and St. Louis Railway Company. The Wisconsin, Minnesota & Pacific Railway extends from the city of Red Wing, as its eastern terminus, to the city of Mankato, its western terminus. Red Wing is 66 miles east from Waterville, and Mankato is 28 miles west of Waterville.

The distance from Chicago to Mankato by the defendant lines is 483 miles. Mankato is also reached by other competing lines of road. The distance to Mankato from Chicago by the Chicago, St. Paul & Kansas City line, through Randolph, is 425½ miles. The distance by the Chicago, Milwaukee and St. Paul Line is 432 miles. The distance by the Chicago, St. Paul, Minneapolis and Omaha line, in connection with the Chicago and North-Western road, is 498 miles. The distance by the Winona and St. Peter road, in connection with the

Chicago and North-Western, is 435 miles. The rates by all of these lines to Mankato and to the territory east of Waterville, and also to Minneapolis from Chicago, are the same as by the defendant line.

The rates charged, in cents per hundred pounds, from Chicago to Mankato, and also from Chicago to Waterville, to Minneapolis, and to points east of Waterville, to and including Red Wing, were when the complaint was filed, and again when the second complaint was filed, respectively, as follows:

Class,	1	2	3	4	5	A.	B.	C.	D.	E.
Mankato rate	60	50	35	25	17	22	18	16	13	10
Minneapolis & Waterville rate	50	40	30	20	12½	17½	15	13	10	8
Difference	10	10	5	5	4½	4½	3	3	3	2

The business that goes over the line operated by the defendant east of Waterville, toward Red Wing, was at the time of the hearing eighty per cent. of the freight business on the line. The business of the line from Red Wing to Waterville and Mankato has not been remunerative, and the line has been continuously operated at a loss down to the end of the fiscal year, June 30, 1889.

The precise facts, showing the earnings and operating expenses and extent of the loss of this road, and the balance sheets of the other connecting roads, are not necessary to be set out. It is sufficient to state that the earnings are less than the operating expenses and fixed charges.

The rates in effect at the present time and since April 1st, 1890, from Chicago are as follows:

Class,	1	2	3	4	5	A.	B.	C.	D.	E.
Mankato rate	45	35	25	19	14½	19	17	14	11	11
Minneapolis & Waterville rate	40	30	22	17	12½	17	15	12	10	10
Difference	5	5	3	2	2	2	2	2	1	1

Conclusions.

The only question in this case is that of the relation that the transportation charges from Chicago to Mankato should bear to the rate from Chicago to Waterville and Minneapolis;

in other words, whether the deflection from the main or direct line of the respondents at Waterville, to reach Mankato, twenty-eight miles west of Waterville, justifies a higher charge than the Waterville rate, which is identical with the Minneapolis rate, and if so to what extent.

The variations and uncertainties in rates at the northwest for a considerable time, due perhaps largely to the opening of new and competing routes, have made it difficult to follow the frequent changes made, and even more difficult to lay down any permanent rule that, under constant rate fluctuations, can be completely effective to prevent more or less discrimination among localities. The present case, however, illustrates the importance of some limitations upon the arbitrary action of carriers in imposing relatively disproportionate charges upon localities not widely dissimilar in situation, nor in the transportation service of the carrier.

The principle of relative equality of rates has frequently been applied by the Commission, and the extent indicated to which dissimilarities of conditions in particular cases might reasonably warrant a difference in charges to localities served by the same carrier without unjust discrimination. (Boards of Trade Union, &c. *v.* Chicago, Milwaukee & St. Paul R'y Co., 1 I. C. C. Rep., 251; Raymond *v.* Same Company, 1 I. C. C. Rep., 230; *In re* Chicago, St. Paul & Kansas City R'y Co., 2 I. C. C. Rep., 231).

The principle of relative justice applied is that when a carrier, by reason of competitive conditions, or for other reasons, serves certain localities at very low rates, the concessions made must not subject other localities or other patrons dependent on the same carrier to undue or unreasonable prejudice or disadvantage, but there must be an equitable adjustment of rates so that there is no unjust discrimination between competitors in like pursuits.

There may be cases in which a carrier legitimately engaged in serving some territory is compelled by some new and aggressive competition to reduce normal and reasonable rates to retain business for its line, and where corresponding reductions at points not affected, or less affected, by destructive competition might be unreasonable. But when a carrier

voluntarily enters a field of competition where, by reason of a disadvantageous route, or the rigor of the competitive conditions, remunerative rates cannot be charged, and its service to a portion of its patrons is unprofitable, it accepts the legal obligation that its service shall be impartial to all who sustain similar relations to the traffic, and for whom the service itself is not substantially dissimilar. As was said in the matter of Chicago, St. Paul and Kansas City R'y Co., 2 I. C. C. Rep. 231, "If they (carriers) deliberately proceed to destroy each other, the law must take care that in doing so they injure as little as possible individuals and communities dependent upon them for transportation facilities" (page 267). This is the plain requirement of the statute, and it is in accordance with obvious principles of justice.

In the case in hand there can be no question that all the rates are exceedingly low. Rates of 45 cents a hundred pounds for the highest classes, graded downwards to 11 cents a hundred pounds for the lowest classes, for the haul from Chicago to Mankato, a distance of 483 miles, present a scale of charges that cannot be considered high, and they seem, in comparison with former rates, so low as to preclude any ground of complaint, even on an ample volume of business. It is not understood, in fact, that these rates, standing alone, are complained of. The complaint is, in substance, that Mankato should have no higher rate than Minneapolis and points east of Waterville, on the ground of distance. Under the present tariff the rates to Minneapolis are five cents a hundred pounds lower on classes 1 and 2 respectively, than to Mankato, three cents a hundred lower on class 3, two cents a hundred lower on classes 4, 5, A, B, and C, and one cent lower on classes D and E. The main line of the respondent passes through Waterville north to Minneapolis. Mankato is twenty-eight miles west of Waterville, and Minneapolis is sixty-five miles north of Waterville. Red Wing is sixty-six miles east of Waterville.

The theoretical justice of the claim made by the complainants may be admitted, but, as often happens in transportation problems, the difficulty lies in applying the rule invoked to the situation; and the strict application of the rule is not

essential to the reasonable protection of the complainants. The situation is, in brief, as follows:

The respondent roads operate a long and somewhat circuitous line from Chicago to Minneapolis, and the shorter lines make the rates to the various points in the whole territory in question, including Mankato and Minneapolis, and the respondent line, in railroad parlance, is obliged to accept the rates made by its competitors in order to share in the business. The rates to Minneapolis and St. Paul are limited by the large and active competition at those cities by way of the Duluth route and over the Soo line. The rate to Waterville, under the restrictions of the fourth section, cannot be higher than to Minneapolis. The rates to points on the east and west road to Red Wing, by reason of the competitive conditions existing, cannot be higher than the Waterville rate. The transportation west of Waterville to Mankato is not affected to the same extent by competitive forces as it is to points on the line east of Waterville, and Mankato dealers can be slightly, if any, interfered with by competitors at Waterville or points east of it, under existing rates. Only a small per centage, about one-fifth, of the business of the east and west lines goes west of Waterville, while four-fifths goes to points east of that town. All the rates from Chicago to these various places are joint through rates, and shipments out from any of them for distribution, must be made at local rates, and mostly in less than car-load quantities. Mankato not being on the direct line to Minneapolis, the fourth section of the Act is not violated by a higher charge for traffic to be delivered there than at Minneapolis. Some additional expense for delivery over another road justifies a somewhat higher charge, as has often been ruled by the Commission.

The contention of the complainants that cost of carriage is usually in inverse ratio to distance, and therefore that the rate per ton per mile to be justly charged decreases with distance, while a generally recognized rule of transportation, is not a requirement of the statute, and is subject to qualifications. It is usually applied in cases of continuous carriage over long through routes, but even then special conditions, such as volume of business, character of route, and necessary

revenue from the business done so as not to perform the service at the expense of traffic at other points, may materially qualify it. As full discussion of this principle and its qualifications was given by the Commission in the case of Business Men's Association of Minnesota *v.* Chicago, St. Paul, Minneapolis & Omaha Railway Co., 2 I. C. C. Rep., 52, 67, 68, the rule can scarcely be applied when traffic is deflected to another road, or to a short additional haul from a grouped district, or to overthrow a system of grouped rates made necessary by physical conditions, and not injurious to the public interests. It is not seen how the rule could be applied to the haul of twenty-eight miles to Mankato with any material advantage.

The respondent line is a competitor in the transportation business to the territory in question, but the business would all be done by the rival lines and at the same rates if the respondents took no part in it from Chicago to Waterville, and cutting down the rate to Mankato below the presents proportion could only lessen the already scanty revenue of the respondent, without affecting probably, its competitors, and without the existence of any material wrong to make it necessary.

The charge to Mankato is substantially ten per cent. higher on each of the various classes than to Waterville and the other points that take the same rate. The additional charge when the complaint was filed was twenty per cent. and upwards on the several classes. This was relatively unjust and indefensible. In the view of the Commission, rates on the respective classes to Mankato ten per cent. higher than to Waterville and the other grouped points, are not unreasonable. It is not disproportionate to the service, nor to the extent of the business, and apparently does not subject Mankato to undue prejudice.

The order of the Commission is that a higher charge to Mankato than to Waterville and the points taking the Waterville rate is not unlawful, but that the rates of the respondents from Chicago to Mankato were, when the complaint was filed, relatively excessive, and that they must not exceed a difference of ten per cent. on the respective classes above the Waterville rate.

PROCTOR & GAMBLE *v.* THE CINCINNATI, HAMILTON & DAYTON RAILROAD COMPANY, THE PITTSBURGH, CINCINNATI & ST. LOUIS RAILWAY COMPANY AND THE PENNSYLVANIA RAILROAD COMPANY.

PROCTOR & GAMBLE *v.* THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY, THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY AND THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY.

PROCTOR & GAMBLE *v.* ORLAND SMITH AND H. C. YERGASON, RECEIVERS OF THE CINCINNATI, WASHINGTON & BALTIMORE RAILROAD COMPANY AND THE BALTIMORE & OHIO RAILROAD COMPANY. (NOS. 235, 236, 237.)

Complaints filed September 12, 1889. Answers filed October 2-17, 1889. Hearing of testimony January 8 and 9, 1890. Hearing of argument February 15, 1890. Brief for complainants filed February 18, 1890. Decided July 17, 1890.

The complainants are large manufacturers of common soap at Cincinnati, Ohio. In the Official Classification common soap stands in the fifth class in car-load lots. The defendant railroad companies have always given it the rate of fifth-class articles, but for many years prior to May, 1889, they charged the complainants for only net weight, the gross weight being one-sixth more than net weight, but since said date they have charged for gross weight without diminishing the rate per hundred pounds. The effect of this was to charge one-sixth more for the same service than had before been charged. The charge for transportation under the net-weight practice was reasonable and just, and without complaint on the part of shippers or carriers. *Held*, that the increased charge by the device of charging for the gross weight, being one-sixth advance for the same service, was unwarranted, as it operated to make the rate unreasonable.

Mortimer Matthews and *Butterworth, Hall, Brown & Smith*, for complainants.

Ramsey, Maxwell & Ramsey, for C. H. & D. R. R. Co.

James T. Brooks, for P. C. & St. L. R'y Co.

James A. Logan, for Pennsylvania R. R. Co.

Harmon, Colston, Goldsmith & Hoadly, for C., C., C. & St. L. R'y Co.

George C. Greene, for L. S. & M. S. R'y Co.

Frank Loomis, for N. Y. C. & H. R. R. R. Co.

E. W. Strong, for receivers of C. W. & B. R. R. Co.

John K. Cowen and *H. L. Bond, Jr.*, for B. & O. R. R. Co.

REPORT AND OPINION OF THE COMMISSION.

VEAZEY, *Commissioner:*

The above entitled causes were heard together. The petition of the first one was in these words:

"I. That the complainant, Proctor & Gamble, is a partnership firm doing business as makers and sellers of soap and candles in Cincinnati, in the State of Ohio, and at their factories at Ivorydale, Ohio, near Cincinnati.

"II. That the defendants above named are common carriers and under a common control, management or arrangement for continuous carriage or shipment, are engaged in the transportation of property wholly by railroad between Ivorydale in Ohio and Washington in the District of Columbia and Baltimore in the State of Maryland and other points upon the line of the said Baltimore & Ohio Railroad in the States of West Virginia, Maryland and Delaware, and all of the said defendants, as such common carriers, are subject to the Act to regulate commerce.

"That the complainant for a long time, including one year last past, has and does now in pursuance of said arrangement ship by the defendants' roads, at divers times, large quantities of their principal product, common soap, in carload lots from Ivorydale to Washington, Baltimore and other points on the line of the Baltimore & Ohio Railroad in the States of West Virginia, Maryland and Delaware.

"III. That said defendants have adopted, to wit, on or about February 18, 1889, and maintained and used until August 15, 1889, a certain classification of articles and property for shipment, according to which rates for charging and exacting payment for services rendered in the transportation of property and in connection therewith were fixed at a certain rate for each class of articles therein set forth. That on or about August 15, 1889, the defendants adopted a similar classification, now in force, to supersede the former, but identical therewith in all matters of which it is herein complained. That said classifications are known and designated as 'Official Classification Nos. 5 and 6,' and are upon the files of this Commission. That said classifications contain six general classes of articles, numbered therein from one to six. That upon said classes defendants have and do fix and maintain decreasing rates in their numbered order; and that the rate fixed for the sixth class therein is about one-sixth less than, or eighty-three and one-third ($83\frac{1}{3}$) per centum of, that established upon the fifth class.

"That the defendants, in common with the other railroads in the large territory covered by said Official Classification, have wrongfully placed and maintained common soap in car-load lots in said fifth class, instead of said sixth class, where it properly belongs, and where the railroads lying in the larger territory covered by the so-called 'Western' and 'Southern Classifications' practically place the same. That the principal articles in car-load lots in said fifth class and the traffic therein, between which and common soap and traffic in common soap there is any basis of comparison, to wit: candles, canned fish, fruits and vegetables, washing crystals, soap powders and liquid soap, are less analogous or similar thereto in point of price, bulk, weight, risk of loss and deterioration in handling and carriage, cost of handling and carriage, tonnage, necessity to consumers and to life and health, and in point of other qualities, characteristics, considerations and conditions, which belong to said articles and affect the traffic therein, and do and of right ought to determine classification than the corresponding principal articles and the traffic therein in car-load lots in said sixth class, to

wit: coffee, fish—pickled, salted or smoked, in boxes or packages—glucose, rice, rice flour or meal, starch in barrels or boxes, sugar, cerealine, corn meal, cracked wheat, farina and flour.

"That with some of the articles named in said fifth class, common soap comes into competition in trade, to wit: with soap powders and liquid soap, and that by classification therewith, said soap powders and liquid soap being of higher price, greater bulk, less weight, less tonnage, of greater risk of loss and deterioration in handling and transportation, have an undue advantage in competition over common soap.

"That in common with most of the articles named in said sixth class, common soap is a staple article of the grocery trade, and while not in competition with said articles, it is of equal importance to the public and as universally used as, in common with them, one of the necessaries of life and health; and, by said higher classification and rating, a burden is placed upon the traffic therein, contrary to the best interests of the public.

"That common soap and the traffic therein possess in a degree equal to any article in said said sixth class, and the traffic in said articles, a union of the qualities, characteristics, considerations and conditions which determine its class. That nevertheless the defendants have enforced said classification of common soap in said fifth class and the rate consequent thereupon in all of complainants' said shipments thereof upon their said continuous line ever since on or about the first day of May, 1889, before which time, however, they, together with all the other railroads in the large territory covered by said system of classification, gave said articles, alone of fifth-class articles, for all shippers practically a sixth-class rate, by carrying the same at net weights, which were eighty-three and one-third (83⅓) per centum of the gross weights, upon which the rate is now made; said difference in weights being the same as that between said fifth and sixth-class rates. That although complainant, on or about May 28, 1889, protested against the same and requested a sixth-class place and rate therefor, they, the defendants and said other Official Classification roads, refusing said request, and

thereby refusing to do what they had practically been doing by accepting net weights while giving fifth-class rates, and what the western and southern roads were doing, have continued to and do now maintain said improper classification and rate, and thereupon the defendants do and have charged, exacted and received payment from complainant for their said services at an unjust, unreasonable and unlawful rate, and do thereby subject the said traffic to an undue and unreasonable prejudice and disadvantage."

The petitioner prayed that the defendants be required to answer the charges, and that, after due hearing and investigation, an order be made commanding the defendants to cease and desist from said violations of the Act to regulate commerce, and for such other and further order as the Commission may deem necessary in the premises.

The petition in each of the other cases was in the same words, except the names of the defendants and the points upon their respective roads to which shipments of soap and candles were made.

The Pennsylvania Railroad Company, one of the respondents in the first case, without denying the other averments of the petition, replied that while southern and western roads do place common soap in car-loads in the sixth class, and some of the southern roads provide a special commodity tariff for the same, yet the rates per ton per mile upon such shipments are higher than the rates per ton per mile from Cincinnati to the east, and that for like distances the eastern roads perform an equal service for lower rates; that the classification of common soap is reasonable and just, and that the components from which it is in part made are placed in the fifth class acceptably, and that it would not be just to place the manufactured article in a lower class than that occupied by the raw materials of which it is composed; that common soap is classed relatively the same since the enactment of the Interstate Commerce Law as it occupied before, and denying that placing common soap in the fifth class results in a disadvantageous competition with washing compounds, soap powder, etc., or that the articles which do com-

pete with this particular soap are placed in a lower class, or that the classification of groceries bears any proper relation to soap, groceries not being shipped under the same conditions and not being in competition with common soap; and averred that the rate charged on it is just and reasonable, both in itself and as compared with kindred and competitive articles.

The Pittsburgh, Cincinnati & St. Louis Railway Company, another respondent in the first case, made similar answer in substance and averred further that common soap had been placed in the fifth class in pursuance of a classification adopted by a committee of great experience and skill in railway transportation, and was so placed as a matter of justice both to dealers and carriers. By agreement the answer of the Pittsburgh, Cincinnati & St. Louis Railway Company was also taken as the answer of the Cincinnati, Hamilton & Dayton Railroad Company.

The New York Central & Hudson River Railroad Company, a respondent in the second case, denied that in the Official Classification No. 6 common soap in car-loads was wrongly put in the fifth class, and that there is any relation between soap and coffee, sugar, flour and the other articles in the sixth class named in the complaint, which requires them to have the same classification. It alleged that soap powder and liquid soap are analagous to common soap, being used for exactly the same purposes and sold in competition therewith, and that they are properly classed together. It alleges that there are many other circumstances to be taken into consideration in addition to those named in the complaint, in determining the proper classification of common soap. This respondent denied that Classification No. 6 imposes any burden on the traffic in common soap contrary to the interest of the consumer, and denied that it has, prior to May 1, 1889, knowingly carried the complainants' soap, or that of any other shipper, at less than the actual gross weights thereof, and alleged that Official Classification No. 6, with respect to common soap, is just and reasonable.

The Cleveland, Cincinnati, Chicago & St. Louis Railway Company in answer made similar admissions and denials as

the other respondents, and also averred that the complainants' soap is not a common soap, but is a toilet soap, and just as appropriate to the trade of a drug store as to trade of a grocery, and denying that prior to the 1st day of May, 1889, the complainants obtained a sixth-class rate on their soap by means of a freight rate charged according to the net weight—to wit: eighty-three and one-third per cent. of the actual weight—and denies that by the classification of common soap the traffic therein is subjected to undue or unreasonable prejudice or disadvantage.

The answer of the Lake Shore & Michigan Southern Railway Company covered the same grounds in denials, admissions and averments as were embraced in the other answers.

Orland Smith and H. C. Yergason, Receivers of the Cincinnati, Washington & Baltimore Railroad Company, respondents in the third case, also made answer substantially as aforesaid, and the same was true as to the Baltimore & Ohio Railroad Company, another respondent in the third case.

The respondents in each of the cases denied that they were under a common control, but admitted that there were certain traffic arrangements between them whereby soap had a continuous carriage from the point of shipment to the point of destination at a through rate.

The controlling issue presented by the petition and answers is whether the rate charged to and paid by the complainants to the respondent railroads for the transportation of the complainants' common soap in car-load lots is just and reasonable, the claim on the part of the complainants being that it was unjust and unreasonable, and that in the classification adopted by respondents this soap should be put in and take the tariff rate of the sixth class instead of the fifth class, where it was when this petition was filed and where it now stands, the rate for the sixth class being about one-sixth less than for the fifth class. The answer of the respondents is a denial that said rate is unjust and unreasonable, and an averment that upon sound principles that ought to control classifications, the complainants' common soap was properly put in and should take the rate of the fifth class.

Complainants' counsel in argument say their grievance is the same as stated in their complaint—that "the application of the fifth class rate to common soap in wrongful and unjust." They also say that practically up to May, 1889, common soap, although it was in the fifth class, was carried throughout the country at what was equivalent to the present sixth-class rate; that this resulted from the former practice of transporting soap at net weight instead of at gross weight, meaning by net weight the actual weight of the soap in a box without charge for the weight of the box, while gross weight includes both the weight of the soap and the box in which it is packed; that in their claim in this complaint, viz., that their common soap be put in the sixth class and take the rate of that class, they are only asking for restoration of the former actual rate, which should be taken as a proper rate by reason of its adoption and long-continued maintenance by the respondent companies without the pressure of competition other than on equal terms. One of the counsel of the complainants says: "The principle that we contend for is this: that the system of net weights having been fixed and the price for carrying soap having been fixed, and the business of the country having adjusted itself to those rates so fixed, that it was utterly wrong for them to change it unless some strong contrary controlling reason can be shown therefor."

The issue in the three cases being the same in substance, they were heard together, and for the purpose of hearing were treated as one case. Although the evidence was very voluminous there was but little controversy of fact.

The facts as stated in sections I. and II. and in the first paragraph of section III. of the complaint, *supra*, are found to be true.

Other facts found are the following:

The defendants in each case are common carriers and were conceded to be subject to the Act to regulate commerce.

The complainants, Proctor & Gambie, have one of the largest soap manufacturing concerns in the country, competing with Kirk and Fairbanks, of Chicago, Colgate and Bab-

bitt, of New York, and smaller concerns in numerous parts of the country. In 1889 Proctor & Gamble shipped 3,000 cars or 56,000,000 lbs. of soap, besides by-products (glycerine and candles) to the value of $250,000. Their testimony tended to show that their business increased 5 per cent., but the expense of delivery increased 33⅓ per cent., and that this is due to the discontinuance of the "net weight" system, entailing an increased cost of 16⅔ per cent., or about $15,000 a year on car-load lots, and probably as much more on lots less than car-loads. The total amount of sale of soaps by Proctor & Gamble is about $2,500,000 annually.

The respondent railroads have adopted what is designated and has become familiar as the "Official Classification." Under this classification the complainants' common soap, in car-loads, is assigned to the fifth class, and in less than car-loads to the fourth class, and takes the rates of those classes respectively. The better qualities or higher grades of soap, such as toilet soaps of different kinds, are assigned to higher classes in the classification (there being six classes in all), and this is owing mainly to higher value, less volume of traffic and greater risk of loss in wreck of train. Complainants' common or laundry soap, highest price, is $6.75 per box of 100 lbs.—10-oz. cakes; lowest price is $2.10 per box of 60 lbs. There are three brands—two in 10-oz. cakes and one in 6-oz. The two kinds of soap in the Official Classification are toilet and laundry. No difference is made in the rates between the high and low grades of either kind. Common soap is a staple article in the grocery trade, of universal use and a necessity to the consumer. The following table was introduced to show some of the articles included in the fifth and sixth classes in the Official Classification:

INCLUDED IN THE FIFTH CLASS.

Apples in boxes and barrels, apple or fruit butters, ashes (pearl or pot), bags and wrapping paper, beans, blacking, bone-black, bowls, wooden boxes, bread-boards, brine or pickle, candles, cabbage, canned goods, catsup, cauliflower, chow chow in barrels, cider, dried fish, meat and vegetables, disinfecting liquid, extracts, fire kindlers, fish, sardines, etc.,

gelatine, kraut, lard, lye, mackerel, meats cured—beef, pork, hams—mince meats, molasses, mustard, oil, oysters, pails, wood, paints, paraffine wax, pickles, potash, powders—cleaning, salts, soap, soap extracts, etc., syrup, tallow, vinegar.

INCLUDED IN THE SIXTH CLASS.

Apples in bulk, cider—O R, P P, coffee, fish—smoked, flour and grain, salt, starch in barrels, sugar—N O S.

Common soap is packed in convenient form for handling by carriers, it is heavy, compact and not bulky in proportion to weight, in comparison with other grocery articles; its liability to damage is very slight; the risk is very light in case of wreck of train; a car can easily be filled with soap to its full capacity; it does not deteriorate in transportation; it furnishes a very large volume of traffic as indicated by the amount manufactured; the material for its production is brought together from many parts of the country, and the soap is distributed everywhere, which indicates the length of haul to which it is subject; its distribution by railroads is as general as its use by individuals; as the latter universally participate in its use, the former must as generally engage in its transportation; it is not tainted by offensive odors of other articles or filth of cars, and can therefore be transported in some cars that would be unfit for many grocery articles; it does not soil a car or affect other freight.

There is no more desirable freight among the grocery articles in the sixth class of the Official Classification than common soap. It is also more desirable than the average materials of which it is made. It is less risky and in more convenient packages for handling than some of the materials. Some of the materials are injurious to other freight. Some require better quality of cars. Some are less convenient for packing in the car. They range through all the classes in classification. Soap is also preferable as freight to soap powders and liquid soap. It is less liable to damage in the wreck of a train and its volume of traffic is much more and its value is less.

Common soap has less value than the average value of the

materials from which it is made, 30 per cent. of its constituent ingredients being water; there is but little loss of raw material in the manufacturing of soap, owing to the by-products, glycerine and candles, the former being of high value and shipped in the highest class; common soap is a staple article in grocery trade, handled through the same channels and by wholesale grocers, and is sold in larger quantities than most grocery articles, the only exceptions shown being sugar and coffee.

One of the defendants' witnesses was Mr. C. E. Gill, chairman of the Official Classification Committee at New York. He testified that class six of the Official Classification was intended only for raw materials and food products and not for manufactured articles, which are generally but not always put in a higher class.

Under this rule it is claimed that common soap should be retained in the fifth class. The main reason for the rule is that the manufactured article is more valuable than the raw material. This is usually the case, but it is not true of common soap, owing to the large percentage of water in the product, and of the high value of some of the by-products resulting in the manufacture.

Common soap was never in the sixth class, but for ten years or more prior to May, 1889, though in the fifth class as now, the charge being for net weight only, the revenue was very nearly and perhaps exactly the same as it would have been if soap had been in the sixth class and gross weight had been charged.

There are other manufactories of soap of about the same size as that of the complainants, located in Cincinnati, New York, Chicago, Philadelphia and Buffalo, besides smaller manufactories all over the country, and the competition in common soap is very active. The largest and best market is in the east and is supplied by the railroads using the Official Classification.

The territory covered by the Official Classification formerly had several classifications, namely, West Bound, East Bound, Joint Merchandise, Middle and Western States and various local classifications. Since the passage of the Interstate

Commerce law all have been brought in the Official, which contains six classes.

In the present Western Classification there are four less than car-load classes, then a fifth and the A, B, C, D and E classes for car-loads. Common soap is there classified in fourth class in less than car-loads, and fifth class in car-loads. Sugar, coffee and heavy staple groceries are in the fourth class generally in less than car-load lots and in fifth class in car-load lots. Soap powder, washing compound and crystals are there classed the same as common soap, and no staple articles of grocery trade take any lower rate.

The Southern Railway and Steamship Classification system has six numbered and seven lettered classes. Soap is in the sixth class, save when given a commodity rate or special to meet competition. Coffee, fish, glucose, rice in barrels and sugar are in the same class—sixth.

The average price to jobbers on all of Proctor & Gamble's soaps is 4 41-100 cts. per pound. The jobbers' (listed) average price on four of the principal brands, "Ivory," "Every Day," "Lenox" and "Town Talk," is about 6¼ cts. per pound. The average price per pound of Joseph R. Peebles Son's staple groceries is as follows:

Candles, 5th class, 11 cts.; canned fish, 5th class, 20 cts.; canned fruits, 5th class, pears and peaches, 3 ℔. cans, 40 cts.; canned vegetables, 5th class, tomatoes, 3 ℔. cans, 15 cts.; corn, 2 ℔. cans, 15 cts.; beans, 2 ℔. cans, 25 cts.; succotash, 2 ℔. cans, 20 cts.; washing crystals, 5th class, 20 cts. a package; pearline and soapine, 5th class, 10 cts.; washing powders, 5th class, 7½ cts.; starch, 6th class, 5 cts.; rice, 6th class, 9 cts.; coffee, 6th class (roasted), Rio, 25 cts.; Java, 31½ cts.; Mocha, 35 cts.

Mr. Eaton, wholesale grocer, Cincinnati, testified: Margin of profit on soap about 8 per cent.; coffee, same; fish, 10 per cent.; rice, 10 per cent.; starch, 12½–15 per cent.; sugar, 4 per cent.; cerealine, 10 per cent.; corn meal, 10 per cent.; cracked wheat, 10 per cent.; farina, 12 per cent.; flour, 6 per cent.; candles, 10 per cent.; canned fish, fruit and vegetables, 12½ per cent.; soap powders, 15 per cent.

From the above it would seem that common soap is less

valuable per pound and nets a less profit in the hands of wholesale grocers than the other articles in the list, with very few exceptions.

Statement showing the classification, rate, distance and rate per ton per mile, charged on common soap, from Cincinnati to points in the South under the "Southern" Classification, and to points in the West under the "Western"—compared with the classification, rate and rate per ton per mile charged on common soap from Cincinnati to points in the East, under the Official Classification on common soap in car-loads.

"SOUTHERN."

Shipped from	Destined to	Distance, Miles.	Article.	Rates Charged	Per ton per mile.
Cincinnati, O.	New Orleans,	826	Com. Soap,	27	.65 cts.
"	Memphis, Tenn.	487	" "	19	.78 "
"	Mobile, Ala.	780	" "	27	.70 "
"	Jackson, Tenn.	422	" "	38	1.80 "
"	Vicksburg, Miss.	707	" "	27	.76 "
"	Meridian, Miss.	630	" "	41	1.30 "

"WESTERN."

Shipped from	Destined to	Distance, Miles.	Class.	Rate in cts. per 100 lbs.	Rate per ton per mile in cents.
Chicago	St. Paul	410	5th	12½	.61 cts.
Chicago	Kansas City	458	"	18	.79 "
St. Louis	Dallas Tex.	682	"	70	2.05 "
Kansas City	Denver	639	"	75	2.35 "

Shipped under Trans-Continental Association Tariffs.

Chicago	San Francisco	2354		110	.93 "
Cincinnati	San Francisco	2648		115	.87 "
Mo. River P'nts.	San Francisco	1864*		99	1.62 "

* Same as from Omaha, Neb.

"OFFICIAL."

Shipped from	Destined to	Distance, miles.	Class.	Rates Charged	Per ton per mile.
Cincinnati, O.	New York, N. Y.	765	5th	26	.68 cts.
"	Local Points	487	"	17½	.71 "
"	" "	422	"	17	.80 "
"	" "	224	"	13	1.16 "
"	" "	404	"	17	.84 "
"	" "	470	"	17½	.74 "
"	" "	588	"	17½	.60 "

Rates generally average higher on all freight on lines covered by the "Southern" and "Western" Classifications than on roads east of Cincinnati and Chicago, owing to the fact of less tonnage and greater expense of operation in the case of the former lines.

It did not appear from the evidence that other manufacturers of common soap were dissatisfied with the present rate in car-load lots. There was nothing to show that common soap would not bear the present rate and pay a fair remuneration as a manufacturing industry. As the reduced rate sought in this complaint would be less than half a cent, probably not over one-quarter, on a cake of soap, it is doubtful whether the reduction would immediately benefit the consumer to much, if any, extent. We think the question involved here is mainly limited in its bearing to the parties to the complaint, and in their presentation of the case they have confined themselves mainly to the question whether the present rate under the new practice of charging for the gross rate is unreasonable or unjust in itself or as compared with other grocery articles in the fifth and sixth classes. Proctor & Gamble pre-pay their freight. The increase in expenses on freight bills is less on in-bound than out-bound freight. Their total in-bound freight 1887 was $70,000, 1888, $75,000; 1889, $81,000. Out-bound freight, 1887, $127,000; 1888, $115,000; 1889, $153,000.

It was given in evidence that one of the possible reasons why common soap was placed in the fifth class was that the revenue derived per ton per mile on fifth-class articles was less than the average cost of transportation on many roads using the classification named—that is, those roads whose reports show the average cost of transportation exceeded 6½ mills per ton per mile.

The earnings per ton per mile on fifth and sixth classes between New York and Chicago, and Cincinnati and New York, are, as they stand in the railroad reports, as follows:

New York to Chicago—950 miles.	5th Class.	6th Class.
Rate (in cents) per 100 lbs.....	30	25
Earnings per ton per mile.....	00.63 cts.	00.53 cts.

VAN[illegible] LAW
LIBRARY,

Cincinnati to New York—760 miles.

	5th Class.	6th Class.
Rate in cents per 100 lbs.....	36	22
Earnings per ton per mile.....	00.68 cts.	00.58 cts.

A careful review of the annual report of the railroad companies in the territory of the Official Classification to this Commission for 1889 shows that they state that the average cost per ton per mile in some instances is nearly equal to the rate on fifth-class articles, and more than the rate on sixth-class articles, and it also shows that there are many roads covered by the Official Classification where the average cost per ton per mile is reported to be below the rate on sixth-class articles. In some cases the cost per ton per mile is stated as low as three mills and a fraction, and in some it is as high as six mills and a fraction. But in this connection it must be remembered that these statements are not claimed to be entirely reliable, and that common soap is an article of most desirable character for freight purposes, and very much more so than the average of articles carried by the railroads. A car can always be loaded to its full capacity with soap, whereas, as to very many articles, and perhaps a majority, it can not be loaded to that extent. So that it is not entirely safe to assume that soap should have a rate as high as the claimed average cost per ton per mile in order to make it a profitable article of transportation; moreover, if the argument or claim based upon the above testimony was sound it would follow that all sixth-class articles should have a higher rate than they take under the existing classification. We think that as to this point it is a proper subject of consideration in making classifications and rate, but that it is by no means conclusive or controlling, and its force is very much diminished in this instance when the advantages of soap as an article of freight are taken into consideration.

It does not appear that there was any complaint of the classification of common soap in the fifth class while the charge was for net weight, or until after the defendants began to charge for the gross weight. Charging for the gross weight at the same rate per hundred pounds as had been charged

for only the net weight increased the freight charges of soap to an extent of about one-sixth, which, as above stated, is claimed to be about the difference of rate between the fifth and sixth classes. In other words, the carriers got about 16⅔ per cent. more per hundred pounds than they had theretofore for many years charged for precisely the same service. The long existence of the former practice whereby a less revenue was received than is now realized tends to show it was satisfactory to the carriers, and nothing appeared to the contrary except the fact of the change to the gross-weight system. The facts established by the evidence show, as we think, that it was a fairly paying rate, taking for comparison the rate on other staple grocery articles in general use, and keeping in mind the desirability of common soap as a freight article in comparison with other groceries. Whether the profit to the manufacturer would enable soap to bear a higher rate than the groceries in the sixth class does not appear. As soap is used by everybody directly or indirectly and is a necessity, it should on that account be transported at a low rate, especially if the people get the benefit of the rate. But it should not be below what is reasonable to the carrier, everything considered. The question is: What is a just and reasonable rate between the manufacturer who pays the freight and the carrier?

In grouping a large number of articles in the same class and thereby giving them the same rate no two would be exactly alike in freight qualities. Classification in its nature must be a compromise. More or less difference in their freight aspect can be shown between any two articles in the same class. It is not improbable that in a more numerous classification than is found in the Official Classification a place might be found that would more exactly fit common soap than the lowest class, and it is not intended that this decision shall be regarded as necessarily conclusive as to rate upon the committee which is now understood to be engaged in an attempt to construct an improved classification, with more classes than is found in the existing classification. There can never be certainty of exact justice in a question of classification and rate, and the more the difficul-

ties that surround such a question in a particular instance are considered, the more surprising it seems that on the whole apparent justice as between different articles has been so nearly attained by classification committees. This, together with their great practical experience and study of the subject, may well cause any revisory tribunal to hesitate to disturb the result of their deliberations in any instance. But it should not be overlooked that their training has been largely from the railroad standpoint, and on this account their error, if either way, is more liable to be in favor of high rates. That they should always be exactly right is more than any earthly tribunal ever attained. Not overlooking either of these considerations, but intending to give them and all others just weight, our best judgment is upon the showing now made, that the charge on the defendant lines for the transportation of common soap should be limited to what it was before they charged for the gross instead of the net weight.

We come to this conclusion with increased confidence from the fact that the classification committee put common soap into the fifth class when the practice was to charge for only net weight and that the ruling here made will not reduce the revenue from what that committee practically provided by their classification. The present charge, therefore, growing out of the substitution of charging for gross weight in place of net weight did not receive by the act of classification and so far as appears, has never received the approval of the committee.

The result is that an order issue directing the defendants in each case to cease and desist from charging the complainants more for the transportation of common or laundry soap and the package containing it than they formerly charged under the net-weight practice.

THE SAN BERNARDINO BOARD OF TRADE *v.* THE ATCHISON, TOPEKA & SANTA FE RAILROAD COMPANY, THE ATLANTIC & PACIFIC RAILROAD COMPANY, THE BURLINGTON & MISSOURI RIVER RAILROAD COMPANY, THE CALIFORNIA CENTRAL RAILWAY COMPANY, THE CALIFORNIA SOUTHERN RAILROAD COMPANY, THE CHICAGO, KANSAS & NEBRASKA RAILWAY COMPANY, THE MISSOURI PACIFIC RAILWAY COMPANY, AND THE ST. LOUIS & SAN FRANCISCO RAILWAY COMPANY.

Complaint filed May 21, 1889. Answers filed June 7-25, 1889. Heard December 5, 1889. Briefs filed November 13, 1889–February 3, 1890. Decided July 19, 1890.

Where complaint alleges that a greater charge, in the aggregate, for the transportation of a like kind of property, is made for a shorter than for a longer distance, over the same line in the same direction, the shorter being included in the longer, and that an unlawful preference is thereby given one locality over another, *Held:* Complaint is sufficient to put the carriers on proof that the services were rendered under such dissimilar circumstances as to justify the greater charge.

The water competition which will justify a greater charge for a shorter distance by railroads must be actual. Possible competition will not justify such greater charge under the provisions of the 4th section of the Act to regulate commerce.

The filing of schedules of rates with the Commission as required by statute raises no presumption as to the legality of such rates, and no omission or failure to challenge or disapprove the schedules of rates so filed can have the effect of making rates lawful which are unreasonable.

Harris & Gregg, for complainant.

Britton & Gray, for A. T. & S. F. R. R. Co., and associated lines.

C. J. Green, for B. & M. R. R. R. Co.

M. A. Low, for C. K. & N. R'y Co.
John S. Blair, for Mo. Pac. R'y Co.
W. W. Belknap, for St. L. & S. F. R'y Co.

REPORT AND OPINION OF THE COMMISSION.

MORRISON, *Commissioner:*

The complainants allege that the defendants, with other railroad companies, composing the Trans-continental Association, "have issued, and are operating under, schedules of joint rates from the Missouri river, St. Louis, Chicago, Cincinnati, Detroit and New York to Los Angeles, Cal. That San Bernardino is a station upon the California Central Railway above named, and is a less distance than Los Angeles from each of said localities, in the same direction, over the same lines, viz.: the main direct railway lines of said railroads from said localities respectively, to Los Angeles, the shorter distances from each of said localities respectively, viz.: the distances to San Bernardino, being included within the longer distances from each of said localities respectively, viz.: the distances to Los Angeles."

Complainants further allege that the defendants' transportation rates and charges on various commodities carried in car-loads to San Bernardino are higher than on the like goods carried in the same manner to Los Angeles from the Missouri river, St. Louis, Chicago, Cincinnati, Detroit and New York. Complainants aver further "that by and through the maintenance of higher rates upon said commodities over said lines as above set forth from said localities to San Bernardino than to Los Angeles, the traffic and commerce of San Bernardino are seriously impaired and lessened, and an unlawful preference is thereby given one locality, Los Angeles, over another, San Bernardino."

The complainants ask this Commission to make such order as will prevent any higher charges for the shorter distance to San Bernardino than are or may be made for the longer distance to Los Angeles, and that they may have such other relief as may be reasonable.

Answering separately, the St. Louis & San Francisco Railway Company admits its membership of the Trans-continental Association, and justifies the making of lower commodity rates to Los Angeles and Pacific coast terminal points. It denies that any unlawful preference is thereby given, or that the traffic of San Bernardino is thereby seriously impaired, and avers that it, the said Company, receives the same proportion on business over its line whether freight is consigned to San Bernardino or Los Angeles.

The Burlington & Missouri River Railroad Company demurs to the complaint for alleged insufficiency.

The Chicago, Kansas & Nebraska Railway Company for answer says its property is leased and operated by the Chicago, Rock Island & Pacific Railway Company, and that as a carrier it, the Chicago, Kansas & Nebraska Railway Company, does none of the business complained of.

Answering together, the Atchison, Topeka & Santa Fe Railroad Company, and the Atlantic & Pacific Railroad Company, the California Central Railway Company, and the California Southern Railroad Company, admit that San Bernardino is on the line of the California Central Railway Company, and sixty miles less distance from Missouri river and other points named in the complaint, than Los Angeles, to which the rates are lower from said points than to San Bernardino. They aver that on account of dissimilar circumstances and conditions, no unlawful preference is given to Los Angeles. They further aver that the rates to San Bernardino are reasonable for the service performed; that lower rates would not be made to Los Angeles and San Diego than to San Bernardino, but for competition by water; that their rates to Los Angeles and other terminal Pacific coast points are far below the average rates on their gross traffic; and that being forced by water competition to accept such low rates to California terminals is not a good or valid reason why they should carry at proportionate or equal rates to San Bernardino or other intermediate points.

The Missouri Pacific Railway Company answers, and admits that it is one of the carriers in several routes from the Missouri river and other named points to San Bernardino

and Los Angeles, over two of which routes San Bernardino is the shorter distance; that by the other four, Los Angeles is the intermediate or shorter-distance point; that it, the Missouri Pacific Railway Company, receives no more for its division or share to San Bernardino than to Los Angeles, and receives no part of the local back which is added to the Los Angeles rate to make the rate to San Bernardino, but admits that in respect to most of the rates complained of the rate to San Bernordino is the Los Angeles rate increased to the amount of the local rate back, but in some instances a differential less than the local back is added. It admits San Bernardino is a less distance than Los Angeles on two routes in the same direction, the shorter being included in the longer distance, but avers that the circumstances and conditions under which goods are carried to the two places are dissimilar, owing to the competition by water to the Pacific coast terminals, including Los Angeles.

The questions presented by the complaint and answers have been inquired into, argument of counsel heard, admissions considered, proofs examined, and after investigation we find the facts to be:

The complainant is a corporation of California, organized in the commercial interests of San Bernardino, which has a population estimated to exceed fifteen thousand in the city and within two or three miles of it. After Los Angeles and San Diego, San Bernardino is the largest city in Southern California. It is 124 miles from the Port of San Diego and 60 miles farther east than Los Angeles and that much nearer to Kansas City, Chicago and other more eastern points.

The population of Los Angeles is estimated at sixty thousand. It is 25 miles by rail from the Port of San Pedro, 482 from San Francisco and 124 from the Port of San Diego.

For continuous carriage of freight from Missouri river and Mississippi river points to San Bernardino, as well as to Los Angeles and other Pacific coast terminals, the lines of the defendant companies form several connecting through routes, and, in combination with lines of other companies, defendan'ts' lines carry to Pacific coast terminals and inter-

mediate points from Chicago, Detroit, Cincinnati and New York. The rates are the same over the several lines or routes so formed, though some of them are as much as nine hundred miles longer than others, and are so circuitous that Los Angeles is reached before San Bernardino, and both are reached or approached from the west by such circuitous lines.

Los Angeles was in 1876 first connected by rail with the Missouri river and more eastern points. The line or route by which such rail connection was then made was from Los Angeles northwest to San Francisco over the Southern Pacific, thence east *via* Ogden, Utah, over the Central Pacific and Union Pacific systems.

In 1881 a more direct connection by rail was made from Los Angeles east over the Southern Pacific line to Deming, New Mexico, thence over the lines of the Atchison, Topeka & Santa Fe, and in 1885 the more direct route from the east over the lines of the Santa Fe system through San Bernardino to Los Angeles was first opened.

The articles upon which the rates complained of are levied, with the charges per 100 pounds in car-loads to San Bernardino and Los Angeles from the several named places of shipment, are as follows:

ARTICLES.	Missouri River to		St. Louis to		Chicago to		Cincin'ati & Detr't to		New York to	
	Los Angeles	San Bernardino	Los Angeles	San Bernardino	Los Angeles	San Bernardino	Los Angeles	San Bernardino	Los Angeles	San Bernardino
Bags in bales, beer—packed, chairs —wooden, cane or perforated seated, not more than ^{a} per doz., iron —bar or rod, jars, soaps, ranges, stoves, black-iron stove furniture and hollow ware, sugar	.99	1.19	1.06	1.26	1.10	1.30	1.15	1.35	1.20	1.40
Bottles, wine or beer, in bulk	.81	1.01	.86	1.06	.90	1.10	.90	1.10	1.00	1.20
Agricult'l machines, reapers, plows, etc., farm wagons without springs	1.07	1.27	1.14	1.34	1.19	139	1.24	1.44	1.30	1.50
Coffee in sacks	1.11	1.31	1.18	1.38	1.23	1.43	1.28	1.48	1.35	1.55
Crockery—common China and white ware, packed	1.17	1.37	1.25	1.45	1.30	1.50	1.40	1.60	1.50	1.70
School furniture	1.35	1.55	1.44	1.64	1.50	1.70	1.55	1.75	1.70	1.90
Pumps —steam or hydraulic, and sewing machines	1.53	1.73	1.63	1.83	1.70	1.90	1.75	1.95	1.90	2.10
Agricultural implements—as forks, hoes, rakes, shovels and spades	1.76	2.02	1.87	2.13	1.95	2.21	2.00	2.26	2.15	2.41
Buggies and carriages	2.50	2.76	2.60	2.86	2.70	2.96	2.75	3.01	2.95	3.21

Throughout the months of September, October, November and December, 1888, and until about January 20th, 1889, the arti-

cles named in the complaint were actually carried by defendants to San Bernardino and Los Angeles at the same rates. When the complaint was filed the defendants' rates to both places were the same from the Missouri river and places named in the complaint or some of them, on some articles of merchandise—among them, lumber, coal in packages, cotton, grain, mill-stuffs, salt, some descriptions of household goods and of railway equipment, beer in wood, butter, eggs, corn, corn meal, flour, oats, wooden staves, headings and hoops, bolts, bacon, hams, beef, pork, lard and canned meats. In a schedule of rates put in force by defendants after complaint was filed and before the hearing, lumber, coal in packages, cotton, grain, mill-stuffs and salt were and are rated higher to San Bernardino than to Los Angeles.

The merchants of Los Angeles and San Bernardino purchase the articles named in the complaint in the same markets, and the customers to whom such articles are sold by said merchants are to some extent the same. The goods purchased are largely shipped over the same lines of road, and quantities of those destined for Los Angeles are carried through San Bernardino at the lower rate, while the rate to the latter place is made up of the through rate to the former added to the local rate back. Such articles are shipped in car-loads to both places, but in very much larger proportion to Los Angeles.

Between San Francisco and the southern border of California, a distance of six hundred miles, San Jose, Los Angeles and San Diego are the only points designated Pacific coast terminals by said Trans-continental Association, and to which rates from the Missouri river and more eastern points are the same as to San Francisco. San Jose is an interior city within fifty miles of San Francisco. Los Angeles is also an interior city, 25 miles from San Pedro, its nearest harbor. The rates between Los Angeles and San Pedro are from 9 to 12½ cents per hundred pounds on goods similar to those named in the complaint. Los Angeles and San Diego are the principal commercial centers of Southern California. San Pedro is a seaport through which importations of coal, lumber and other commodities from the neighboring islands

and British America are brought in, and vessels come in ballast from San Francisco to San Pedro, to be loaded with grain, but its commerce is very small.

None of the articles named in the complaint shipped from the Missouri river or places further east have reached Los Angeles through San Pedro for many years. Seven or eight years ago some agricultural implements were shipped around Cape Horn to San Francisco. The time when shipment of any of the articles named in the complaint was made from the east directly through San Pedro or other Pacific coast port to Los Angeles was not within the recollection of any witness testifying.

Some goods are shipped from New York by water to New Orleans, thence by rail to California and intermediate places. Practically there is no such thing as water competition or a water route from the Missouri and Mississippi rivers and interior cities to the Pacific coast in the carriage of the articles named. Many of them, such as stoves, ranges, black hollow ware, when carried over a water route, are liable to injury from rust.

It is possible to ship most of the articles named in the complaint from Atlantic ports and cities around Cape Horn to ports and cities on the Pacific coast. None are so shipped to or through San Diego or San Pedro, California. To what extent they are so shipped to San Francisco or through it to Los Angeles, if at all, has not been disclosed by the testimony or otherwise ascertained in this investigation.

By way of answer the Burlington & Missouri river Company alleges insufficiency of the complaint, and makes no other or more specific objection. Other defendants by counsel at the hearing, made like objection and assigned as a reason for such alleged insufficiency that the complaint did not state that the transportation services to San Bernardino, for which a greater charge was made for the shorter distance, and the service to Los Angeles, a longer distance for which a less charge was made, were services rendered under substantially similar circumstances and conditions.

After alleging the greater charge for the shorter distance, the complaint states that by the maintenance of higher rates

on the commodities named over the defendants' roads from the Missouri river and other places named to San Bernardino than to Los Angeles, an unlawful preference is given to one locality, Los Angeles, to the injury of the traffic and business of the other.

We think the statement that unlawful preference was given by maintaining a higher rate for the shorter distance is sufficient. Substantially similar circumstances and conditions were essential to make the charges unlawful, as they are stated to be. Such relief as this Commission was intended to afford was expected to be and should be easily accessible to the unlearned in the law. The Commission in the discharge of its duties might without complaint have instituted this inquiry. In any such inquiry or investigation, with or without formal complaint, the carriers must be advised of the nature of the investigation and given an opportunity to show the legality of alleged excessive charges. That the complaint is and was sufficient for the purpose of such notice, appears from the answers of the defendants, in which they admit greater charges for the shorter distance to San Bernardino, and claim, by way of defence, that such greater charges are lawful and not made under substantially similar circumstances and conditions with the charges to Los Angeles. It is upon this dissimilarity and only upon this that the defendants rest their defense.

That the defendants' rates to San Bernardino are higher than to Los Angeles on the merchandise mentioned in the complaint is not questioned. That San Bernardino is an intermediate point and nearer than Los Angles to the Missouri river, St. Louis, Chicago, Cincinnati, Detroit and New York over the same line in the same direction, the shorter distance to San Bernardino being included in the longer distance to Los Angeles, is admitted. The only question to be determined is as to the existence of actual competition by water, such water competition as would take the Los Angeles traffic, or a considerable part of it, from the defendants should they maintain a scale of rates from Los Angeles which would be fairly reasonable from San Bernardino. If the defendants, by maintaining rail rates which were no more than reasonable for

the service to Los Angeles, would thereby deprive themselves of the traffic because of the lower rates at which water carriers would take the traffic, they, the carriers by rail, might lawfully maintain some less profitable rate. Their right to so reduce their rates would be subject to the limitation that such rates should yield some profit and not be so low as to impose additional burdens on other traffic, "or to subject any particular person, company, firm, corporation or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

It does not appear that the water carriers deprived the defendants of any traffic in the several months from September 1st, 1888, to January 2d, 1889, during which time the same rates were maintained to San Bernardino as to Los Angeles. The charges on grain, mill-stuffs, salt and some other articles were the same to both places when this complaint was made. Since October 1st, 1889, the defendants have made and continue to make higher charges on these articles to San Bernardino. The reason assigned as a justification for these lower charges for the longer distance is not that grain, mill-stuffs, salt and other like articles are carried, but that they can be carried, by water through some of the Pacific ports to Los Angeles. Some contradiction of this reasoning is found in the defendants' charges, which are the same to Pacific coast terminals and to intermediate points on corn, corn meal, flour, oats, wooden staves, headings, hoops, iron bolts, bacon, hams, pork, lard and canned meats, and many other articles, the transportation of which by water is as practicable as is the transportation of most of the articles named in the complaint, and others on which the lower rate is maintained for the longer distance.

The defendants in their answers aver the existence of water competition, which compels them to maintain lower rates on the goods, and from the places named in the complaint, to Pacific coast terminals, including Los Angeles, than the rates which they do and reasonably may maintain at intermediate and shorter-distance places, including San Bernardino.

It has not been shown by testimony nor otherwise ascertained that the defendants, or other carriers by rail, have any

competition with carriers by water in the transportation of stoves, ranges, black-iron hollow ware, from Kansas City and Chicago, reapers, mowers, harvesters and plows from Madison, Wisconsin, or Detroit, Michigan, beer in barrels from St. Louis and Milwaukee, common crockery and white ware from Liverpool, Ohio, farm wagons and carriages from Kansas, or in the transportation of any such articles from these States or other interior places to the Pacific coast. The existence of any such competition can hardly be seriously insisted upon.

It is claimed both by answer and in argument that water competition may and does exist between New York City and Los Angeles in the transportation of such merchandise, justifying a lower charge from New York to Los Angeles than to intermediate or less distant Pacific coast points, and that such water competition between Atlantic and Pacific coast points makes the carriage by rail from such interior points as Cincinnati, Chicago and St. Louis, to Pacific coast terminals, at reduced rates, necessary and legal. Had the existence of actual and considerable water competition from New York been proven it would not establish the existence of like competition from interior points. Competition is possible from such interior points between the most direct all-rail carriers to the Pacific and carriers by rail and water to and through Atlantic ports, thence around Cape Horn or to and across the Isthmus and up the Pacific. No such part rail and water competition from the interior points named is shown to exist, nor does it exist.

An agent of one of the defendant roads testified that seven or eight years ago some agricultural machinery was carried around Cape Horn to San Francisco, and on this testimony alone rests the claim of water competition to Los Angeles, nearly five hundred miles from San Francisco. That the merchandise named in the complaint is not carried by sea from New York or by sea and rail from Cincinnati and interior points to Los Angeles through San Pedro, appears from the evidence, and is confirmed by the fact that the rail rates are higher to San Pedro than to Los Angeles. If they were so carried through San Diego they would necessarily go at

the same rate to San Bernardino, which is a trifle nearer Los Angeles by rail to San Diego.

Possible competition by water is not sufficient to justify a greater charge for the shorter distance. Under the provisions of the fourth section of the Act to regulate commerce, the competition must be actual, and so counteracting as to take the freight if the lower charge for the longer distance was not maintained. Such competition to Los Angeles is not established by the fact that some of the articles named in the complaint were carried by sea to San Francisco seven or eight years ago. That was previous to the extension of the Southern Pacific road east, and before Los Angeles and Southern California were connected with the east by the Santa Fe road or system of roads, nearly one thousand miles shorter than the former route north and east to and over the Central Pacific and Union Pacific route. Since the construction of these more direct routes by rail from Lower California, water competition from the Missouri river, St. Louis and more eastern cities to Los Angeles, has not existed, and does not now exist, to justify the greater charge for the shorter distance to San Bernardino.

The schedule of rates of the Trans-continental Association in force when this proceeding was commenced and for some time previous thereto, and under which defendants operate their roads, made the same rate to Los Angeles and San Bernardino on a few commodities, and on the mass of merchandise made no through rates to San Bernardino from the Missouri river and points farther east. The defendants by counsel claim the legal right to continue this practice, because such schedules had been filed with the Commission without its expression of disapproval. Such claim has, and can have, no legal sanction. These schedules are filed with the Commission to secure publicity of rates and to furnish the Commission with evidence of all rates established and the changes made therein, the better to enable it to enforce the provisions of the Act to regulate commerce. No presumption arises as to the legality or illegality of the rates from the mere fact of filing the schedules, and rates which are illegal cannot be legalized by any failure to challenge them. The immense

number filed and the interminable changes made in the rate sheets render such personal inspection and examination by the Commission as would enable it to determine their legality at the time of filing impracticable. Besides, such *ex parte* inspection and examination by the Commission would neither conclude the carriers as to the reasonableness of their rates nor the public from challenging them. The legality of a scale of charges, as in the case under consideration, may, and frequently does, depend on facts not appearing in the schedule and requiring investigation to determine, and the question of illegality may be raised by complaint made, or at the instance of the Commission. Charges to be lawful are required to be reasonable and just and no omission to express disapproval, nor any failure to challenge them anywhere can make rates lawful, which are unreasonable and unjust.

The defendants have failed to establish the existence of dissimilar circumstances which justify the greater charge for the shorter distance to San Bernardino, than for the longer distance to Los Angeles, from Kansas City, St. Louis, Chicago, Detroit, Cincinnati, New York and corresponding points on commodities mentioned in the complaint. Such greater charge is therefore unlawful and an order will issue requiring its discontinuance from and after September 1, 1890.

IN THE MATTER OF ALLEGED EXCESSIVE FREIGHT RATES AND CHARGES ON FOOD PRODUCTS.

Filed July 19, 1890.

1. The Act to Regulate Commerce makes it the duty of the Interstate Commerce Commission to execute and enforce the provisions of the Act which requires rates and charges to be reasonable. In the performance of this duty the Commission has authority to inquire into the management of the business of common carriers and to require the attendance and testimony of witnesses, the production of books and papers, tariffs and contracts relating to any matter under investigation. To enforce its authority in this respect the Commission must invoke the aid of a court of the United States.
2. When applied to by petition the Commission must investigate matters complained of, and must, to enforce the Act, make investigations and prosecute inquiries instituted on its own motion. On making any investigation, the Commission is required to make a report in writing of its recommendations, conclusions and the findings of fact on which its conclusions are based, which recommendations and conclusions, if not complied with, can only be enforced through the courts after trial, in accordance with established procedure. In such trial the facts found by the Commission, in conformity with the statute, have legal effect and are *prima facie* evidence; but the recommendations, conclusions and orders of the Commission are of no binding force in the courts.
3. The Commission having entered upon inquiry and investigation as to the reasonableness of transportation rates on food products and given notice of the time and place of taking testimony and afforded opportunity for calling and cross-examination of witnesses: *Held*, That such proceeding was a substantial compliance with the statute.

OPINION ON PROTEST AND MOTIONS TO DISMISS.

BY THE COMMISSION:

The Commission having on June 7th, 1890, made its investigation, forwarded to the United States Senate a copy of the report of its conclusions and recommendations, with the findings on which such conclusions are based, in which report the Commission said:

"The evils complained of are alleged excessive freight rates, and the remedy to be applied is the reduction of such as are unreasonable. Both

have been considered in this opinion and report. The purpose of an investigation of the complaint that farmers cannot obtain cost for food products is to the end that excessive rates might be corrected. This correction will be made so far as reasonably may be done as the result of this investigation by an order of the Commission in conformity with its determination herein set forth."

On the 11th day of June, 1890, the Chairman of the Executive Board of the Interstate Railway Association, for said Association and the companies composing it, made protest against such proposed correction and reduction of rates and in support of such protest submitted a statement ending as follows:

"In view of the unexpected form which this investigation has taken, an opportunity for an examination of the evidence and a discussion of the facts pesented is asked for and the request is made that the final issuing of the report be withheld until such proceedings can be taken.

"Respectfully submitted,

(Signed) ALDACE F. WALKER,
Chairman, Executive Board,
Interstate Commerce Railway Association."

To give opportunity for examination of testimony and evidence and for argument, the Commission on June 16th, 1890, issued the following notice:

"INTERSTATE COMMERCE COMMISSION,
OFFICE OF THE SECRETARY,
WASHINGTON, June 16th, 1890.

"To —— ——,
—— ——:

"A copy of the report of the Interstate Commerce Commission upon the investigation directed to be made by the United States Senate by resolution, set forth in said report, adopted February 19th, 1890, is herewith furnished to you.

"The Commission proposes to make an order based on the findings and conclusions of said report, and you will be given an opportunity to be heard and to present argument or reasons based upon the testimony taken why such order should not be made. Such testimony is on file with the Commission and can be examined by you.

"The Commission hereby appoints the 8th day of July, 1890, at 10 o'clock A. M., as the time, and its office in Washington, D. C., as the place of hearing aforesaid.

(Signed) EDW. A. MOSELEY, *Secretary.*"

This notice with a copy of said report of the Commission was served upon the several carriers interested, including those composing said Interstate Commerce Railway Association. Like timely notice of such hearing was given to numerous Boards of Trade and other commercial organizations and to the Boards of Railway Commissioners of several States, including the States of Iowa, Nebraska, Kansas, and Missouri.

On the said 8th day of July, 1890, the said Aldace F. Walker appeared as attorney for the following Companies:

The Atchison, Topeka & Santa Fe Railroad Company; Burlington, Cedar Rapids & Northern Railway Company; Burlington and Missouri River Railroad in Nebraska; Chicago & Alton Railroad Company; Chicago, Burlington & Kansas City Railroad Company; Chicago, Burlington & Quincy Railroad Company; Chicago, Milwaukee & St. Paul Railway Company; Chicago & Northwestern Railway Company; Chicago, Rock Island & Pacific Railway Company; Chicago, St. Paul, Minneapolis & Omaha Railway Company; Fremont, Elkhorn & Missouri Valley Railroad Company; Hannibal & St. Joseph Railroad Company; Illinois Central Railroad Company; Iowa Central Railway Company; Kansas City, St. Joseph & Council Bluffs Railroad Company; Minneapolis & St. Louis Railway Company; Missouri Pacific Railway Company; St. Joseph & Grand Island Railroad Company; St. Louis, Keokuk & Northwestern Railway Company; St. Louis & San Francisco Railway Company; Sioux City and Pacific Railroad Company; Union Pacific Railway Company; Wabash Railroad Company—

And on their behalf moved "to dismiss the pending proceedings for want of jurisdiction" and submitted a brief or printed argument in support of such motion.

In this list of companies that by counsel moved to "dismiss for want of jurisdiction" are the same companies that compose the Interstate Railway Association and that by the same counsel protested and asked opportunity for examination of the evidence and a discussion of the facts presented,

which opportunity was afforded. Counsel for the New York, Lake Erie & Western Railroad Company and for the Baltimore and Ohio Railroad Company make the like motion to dismiss for want of jurisdiction.

The avowed purpose of these applications, by protest and motions, is to prevent the issue of any order for a reduction of rates and charges based on the findings and report of the Commission, and they may be considered together.

The Interstate Commerce Commission is by the Act to regulate commerce "authorized and required to execute and enforce the provisions of this Act." In the performance of this duty the Commission cannot compel the attendance and testimony of witnesses, the production of books and papers, nor enforce any order it may make without invoking the aid of a court of the United States. The Commission not being a court, an attorney-at-law can have immunity from the legal penalties of contempt, and accuse it of misstating and perverting testimony.

The Commission can investigate, find facts, reach conclusions, and make orders on complaint made by others or upon inquiry instituted on its own motion. It can hear and determine, ascertain and declare the truth, but its findings, conclusions and orders can only be enforced through the decisions and judgments of the courts, made and rendered after trial in accordance with established judicial procedure. Such trial is new and one in which the court reaches its own conclusions and makes its own orders. In such trial the conclusions and orders of the Commission have no binding force. Its reported findings of fact alone have legal effect in the court. These are *prima facie* evidence and sufficient until in the opinion of the court overcome by other evidence, and the same course of judicial investigation in the courts is open to the carriers whether proceedings are or are not commenced and conducted in every particular in conformity with the statute.

That the findings of fact by the Commission may have validity as a basis for its conclusions and orders, or to be

accepted as *prima facie* evidence in the courts it is essential that such findings be made in conformity with the statute. Under the statute the Commission may proceed to enforce the provisions of the Act on complaint made by any person, corporation or association authorized to complain, and in the absence of such complaint the Commission must, if it is to enforce the law, proceed on its "own motion."

In raising the question of jurisdiction, by protest and motion, counsel assumed to be in some confusion because in the report of findings and conclusions of the Commission, it is said that the direction of the Senate to investigate was equivalent to a complaint made through that body that rates are excessive, and that such complaint was repeated through the Department of Agriculture. To avoid any such confusion counsel need only remember that neither the Senate nor the Department of Agriculture is authorized to make any complaint, which under the statute the Commission is required to investigate. The complaint so made and repeated through the Senate and Agricultural Department was not a form of legal process, but an expression of discontent and dissatisfaction with existing rates. It imposed no duty, conferred no power. It was an admonition suggesting too much forbearance if not an omission of duty in respect to rates. As such it showed that the Commission did not of its own motion without probable good cause institute this inquiry and begin the investigation under the statute.

One of the grounds on which jurisdiction is denied is based on the assumption of counsel that the proceeding was not commenced and conducted in accordance with the rules of practice established by the Commission, and was therefore without authority of law.

The Act provides "that the Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice," and "may from time to time make or amend such general rules or orders as may be requisite for the order and regulation of business before it." The rules of practice or orders which

have been made in accordance with these provisions of the Act refer to proceedings commenced by parties authorized to complain and apply to the Commission by petition. Such rules or orders have no application to proceedings instituted by the Commission on its own motion. These are commenced and conducted under the statute.

The law requires the party complaining of anything done or omitted to be done by any common carrier to apply to the Commission by petition which shall briefly state the facts, and the rules made by the Commission for the regulation of its proceedings require the petition to be verified. If the statute requires the two proceedings, or the method of commencing the two proceedings provided for in section 13 of the Act, to be commenced in the same way, then the Commission to institute inquiry on its own motion must present a petition to itself; and, if the course of procedure or rules of practice prescribed by the Commission apply to the investigations and proceedings commenced by the Commission on its own motion as well as to those not so commenced, then the Commission must not only petition to itself, but must itself verify such petition. In the matter under consideration the Commission or some member of it would first make oath to the facts showing the rates to be unreasonable, then proceed with the investigation to ascertain if the verification was true and whether the rates were or were not unreasonable. Such is not believed to be the method provided by the Act or the rules of the Commission for attaining the "ends of justice."

The Commission is authorized to institute inquiry on its own motion and in such inquiry "to investigate the matter in question." It has so determined when it has entered upon the investigation of such matters, and it may prosecute any inquiry necessary to such investigation by one or more of the Commissioners in any part of the United States. In any investigation the party to be affected must have notice. In any such matter as that we are now considering the party to be affected must have notice of what such party has done or omitted to do and which is challenged and which it is pro-

posed to investigate. The notice given to the several companies named elsewhere in this proceeding was sufficient for this purpose and sufficient in law. It enclosed a copy of the preamble and resolution of the Senate, and was as follows:

"CHICAGO, March 12, 1890.

"You probably have information that the Senate has directed the Interstate Commerce Commission to make investigation of the reasonableness or otherwise of rates on food products from the north-west to the eastern markets.

"By direction of the Commission we expect to take testimony on the subject referred to at Sioux City, Omaha, Lincoln and other points not yet determined upon. We expect to commence to take testimony at Sioux City on Friday next and from there will go to other points. We advise you of this that you may be present and offer such testimony as you may desire.

"Respectfully,

(Signed) W. R. MORRISON,

(Signed) W. G. VEAZEY,

Commissioners."

This notice gave to the railroad companies information that the reasonableness of their rates for carrying food products from the northwestern producing regions to markets east were challenged, that the question whether such rates were or were not reasonable was to be investigated, that by direction of the Commission two of the Commissioners would take testimony at Sioux City, Iowa, on the day named, to be followed by the taking of testimony at other places, and that on the taking of testimony at Sioux City, and wherever taken, opportunity will be afforded said companies to put in or offer testimony and to call or cross-examine witnesses. Full opportunity was thus afforded the several companies so notified to make justification of the reasonableness of their rates and protect their rights involved in the investigation. Most of the companies so notified improved this opportunity and were represented by attorney or some of their principal officers, or both, at the times and places of taking testimony, and on every occasion where testimony was taken attorneys on behalf of some of the companies attended and represented them. The same attorney now moving to dismiss, and who as

chairman of the Executive Board of the Interstate Commerce Railway Association appeared for that Association and asked time to examine the testimony and for argument, Aldace F. Walker, Esq., appeared for the several companies of that Association at the taking of testimony at Sioux City, Iowa, Lincoln, Nebraska, and Chicago, Illinois, and as the attorney for such companies put in testimony, cross-examined witnesses, tendered and examined witnesses, tendering among others, himself as a witness, and in his testimony March 12, said:

"In my judgment, under the conditions of the present winter the question of price obtainable for the food products of Kansas and Nebraska has no relation whatever to the rates of transportation charges thereon."

And again:

"If the state of the market were different, conditions might exist in which reductions in the transportation charge would benefit the producers of the grain. So long as the pressure to sell continues, and the market is weak, any attempt to regulate tariffs for the advantage of the producers will necessarily result in failure."

It thus appears that said companies were, by notice given, fully advised of the fact that the reasonableness of their rates were questioned and being tried, and this is confirmed by their admission made in support of the protest and motion to dismiss, that in "some cases" questions were asked by representatives of the roads and that "a very few witnesses were tendered and examined" by them. Probably more would have been tendered but for the fact that whenever practicable the Commissioners called the representative officers and managers of the several companies as witnesses and thus made their calling by the attorneys of the roads unnecessary.

In view of the facts the Commission heard with some surprise the suggestion of counsel for the western roads that in the conduct of the investigation made, "No appearance was entered of record by counsel." The formal recording of such appearance is not deemed essential, and it is hardly possible that the suggestion will be repeated. Preparatory to taking

testimony as to the reasonableness of the rates in question, and previous to the taking of testimony at Sioux City, the Commissioners, to ascertain the method of conducting business and making charges on western roads, heard at Chicago the testimony of J. N. Faithorn and J. W. Midgley, Chairmen, respectively, of the Western and Northwestern and of the Southwestern Divisions of the Western Freight Association, and, as such, the representatives of all the western roads to be affected by this proceeding. These witnesses are experienced, trained and skilled in railway methods, the manner, cost, and value of transportation, and fully competent to present facts with as slight disadvantage to the roads as the whole truth told by upright men will justify. It was not deemed necessary to give the roads other notice that the testimony of the representative heads of these freight associations was to be taken than was given in the request to appear and testify. Chairman Walker of the Interstate Railway Association was present to cross-examine, and his own statement and testimony was offered by him and was taken by the commissioners at the time and place where the testimony of Messrs. Faithorn and Midgley was taken.

Some testimony was taken by two of the commissioners in the same way at seaboard cities relating to ocean, lake and canal transportation, to railroad transportation between the Mississippi and the seaboard, and to the general questions directed to be investigated by the preamble and resolution of the Senate.

In connection with the assumed irregularity of this proceeding counsel alleges "that evidence was used, obtained without the sanction of any oath." If this statement means that the schedules of rates filed with the Commission by the railroad companies, which never have the sanction of any oath, were used as evidence, the statement is accurate to that extent, and to that extent only.

In prosecuting the investigation as to whether the rates between the seaboard and Chicago and points east of the

Mississippi river were reasonable or unreasonable, the roads carrying between the Mississippi river and the seaboard, and named elsewhere in this proceeding, were on the date thereof served with a copy of the following notice:

"INTERSTATE COMMERCE COMMISSION.

"OFFICE OF THE SECRETARY,
WASHINGTON, May 10, 1890.

"The Commission is further investigating at its office in this city, alleged excessive freight rates on food products to eastern markets, as directed by the United States Senate, and will receive and consider, any day before 22d instant, evidence or argument offered by your company relative to reduction of existing rates.

(Signed) EDW. A. MOSELEY,
Secretary."

Eastern roads were thus duly informed of the time and place where they might justify their rates on food products and were notified that such rates were alleged to be excessive and that the question of their reasonableness and reduction was being tried and considered.

Such eastern roads were not served with the notice of the taking of testimony at Sioux City, dated March 12th, for the reason that they carry through from no points farther west than the Mississippi river, while the roads west of that river carry no farther east or make no part of a through line or route farther east than the Mississippi or Chicago. All the legal requirements provided by the Act for commencing and conducting inquiries and investigations begun by the Commission on its own motion have been, as we believe, substantially complied with in this proceeding, and the motion to dismiss is not sustained.

In making final disposition of this matter the Commission must proceed without the assistance it might have received had counsel used the afforded "opportunity for an examination of the evidence and a discussion of the facts presented" to obtain which protest was made.

In the protest, motions and argument submitted to prevent the issue of any order to reduce rates, it is assumed that the

rates in question are no more than reasonable and that every reduction proposed by the commission is unreasonable and unjust.

When the report was made the charges of all the roads extending through Iowa and Missouri from either side of the Missouri river to the eastern seaboard on corn and oats was the same, and the Commission reported the rates should be the same on oats as on corn from interior Kansas and Nebraska.

There is no conflict of testimony to the fact that the cost of handling and hauling corn and wheat is the same and the only justification of higher rates on wheat is its greater value. During fifteen successive years or more last past, until the last year, wheat, corn, and all grain was carried at the same rates on all eastern roads. Recently the rate on all roads east of the Mississippi river has been 12½ per cent. higher on wheat than on corn. From the Missouri river in Iowa over all roads, it is 25 per cent. higher. Over some of the same roads which have lines in Missouri and Nebraska the rate from the Missouri river in Missouri is 12½ per cent. higher, and 25 and 30 per cent. higher from Nebraska on wheat than on corn. In Kansas the rate on wheat and corn shipped south is the same; shipped east the rate is more than 25 per cent. higher on wheat than on corn. No reason is shown to the Commission and none is believed to exist why such different proportions in rates and charges should be made in adjacent localities so similarly situated as are the sections to be affected, and the Commission reported 15 per cent. as the limit of the greater charge on wheat.

From the Missouri river, as well as from points farther west, through carriage as now conducted, is through to Chicago or to the Mississippi river, east side, and the through rate is always 5 cents less to the Mississippi than to Chicago. The Commission has held that the divisions of through rates over several lines is a matter of adjustment by the roads, that the public is concerned in the reasonableness of rates but not in their division. The Commission did not,

therefore, in its reported findings state the division and apportionment of the rate to the several lines engaged in carrying through from Kansas and Nebraska to Chicago, St. Louis, or to the Mississippi river, east side. These divisions were stated and the share or part of the through rate received by the roads east and west of the Missouri river was proven in the progress of the investigation. It thus appeared that on corn carried at the existing rates from Kansas and Nebraska to Chicago the share of the through rate received by the roads carrying from Kansas City and Council Bluffs to Chicago is 15 cents, the highest, and 12 cents, the lowest, an average of 13½ cents on the hundred pounds on through business as compared with 20 cents on shipments carried to the same places and originating at Kansas City or Council Bluffs. For this haul from Council Bluffs and other Missouri river points in Iowa and Missouri, for which the roads are now receiving 13½ cents on through shipments from interior Kansas and Nebraska, the Commission reported 17 cents as a reasonable rate for the haul from and to the same point on business not coming through from Kansas and Nebraska but shipped through from Council Bluffs and Kansas City and corresponding points. Under the proposed 17 cents rate the roads carrying between the Missouri river and Chicago will receive 3½ cents per hundred pounds, or $10.50 per car load more on Missouri river business, than such roads now receive for the same service in carrying corn coming from stations farther west.

The agreed division of the rates in force give to the roads between the Missouri river and the Mississippi river, east side, for their share of the haul on corn coming from points farther west, approximately, 9 3-10 cents. The Commission reported 12 cents as the charge which might reasonably be made for the same service in carrying corn which did not come from points farther west than the Missouri river. Under the proposed rate the Wabash or any competing road carrying corn shipped from the Missouri river to St. Louis or East St. Louis, 280 miles, may charge $8 per car-load more than the agreed division or share of the same road for the same

service rendered in carrying corn shipped through from points farther west under the existing rates. No claim has been made that the division or part of the through rate received by the roads east of Kansas City and the Missouri on shipments from points farther west is not fairly remunertive and, as we believe, the claim cannot reasonably be made that $10.50 more on the car-load of corn to Chicago and $8.00 to St. Louis is not a fairly remunerative rate for the same service on shipments not coming from points farther west than the Missouri river.

The proposed rates on corn from Fremont and some points in eastern Nebraska will be seven, and from Lawrence and other places in eastern Kansas as much as eight mills per ton per mile, but in the main the rates which the Commission has decided would be reasonable from interior Kansas and Nebraska through to St. Louis, to the Mississippi and to Chicago are practically 6½ mills per ton per mile, though some are considerably higher and the length of haul varies from 300 to 720 miles. The principal carriers through from Nebraska and Kansas to Chicago and to the Mississippi, either over their own lines or the lines of companies of which they own the capital stock, are also carriers, in connection with eastern lines, through from the Mississippi to the seaboard. It was proven in the investigation that the rates which the Commission reported as reasonable from points west of the Missouri are half as much more per ton per mile than the same roads receive under existing rates for comparatively short distances east of the Mississippi.

Taking for illustration Wellington, Kansas, a station on the Santa Fe and on the Rock Island road, distant from Chicago 708, from St. Louis 530 miles, and by the scale of reduction proposed the corn rate will be to Chicago 23, to St. Louis 18 cents, which is 50 per cent. per ton per mile more than the same roads now receive for their respective shares on through business over the same lines east of the Mississippi and is half as much more per ton per mile than is received by any initial road carrying from St. Louis and East St. Louis east to the seaboard or north to Chicago.

The cost of gathering freight has not been overlooked, but the chief element of cost which makes the carrying of grain from points west of the Missouri river more expensive to the roads than like carriage east from St. Louis and other places on the Mississippi is the less tonnage and business over the roads west of the Missouri. These elements of greater cost have been considered and are fully compensated for in the rates determined upon. The tonnage of the roads which take up east-bound freight at the Mississippi is small in comparison with the tonnage of roads further east, though generally exceeding that of the roads further west; still the average of the roads which carry east from St. Louis and the Mississippi and not from points west of the Missouri is less than the tonnage and business of the Union Pacific, a principal carrier of grain in both Kansas and Nebraska.

The rates from Chicago and from St. Louis and the Mississippi river now charged on corn, oats, wheat and flour to the eastern seaboard are not found to be excessive, the charges on other principal food products between the Mississippi and the seaboard are involved in pending complaints heard on petition and answer, and therefore no order as to these rates and charges will be now issued.

The highest or maximum Chicago rate in force on corn west of the Missouri is 25 cents. Reduced as proposed in the report it would be 23 cents, a fairly reasonable rate from that territory for distances of 700 to 750 miles. It has been urged as a reason why no order of reduction should be made that this maximum extends indefinitely, and that the reduction would extend to stations so distant as to make the proposed rate unreasonably low and unprofitable. The testimony established, and the Commission found that the corn belt or district did not extend from the Missouri river more than 200 miles in Nebraska and 250 miles in Kansas, and the reductions proposed are to apply to stations within such distances.

At junction points or places of severe competition the rates in force may be so much lower than the rate generally pre-

vailing that the even scale of reduction proposed will not apply with equal justice in these exceptional cases. To avoid possible injustice in this respect no rate is required to be lower than 6½ mills per ton per mile for distances of not more than 500 miles, nor lower than 6 mills per ton per mile for any distance.

The existing rates are often fractional and the required relations between rates on corn and wheat limiting the difference to 15 per cent. would result in other and more minute fractional rates. The required reductions may therefore be made on the basis of even cents, and wherever the reduced rates would be fractional the fraction may be counted as a cent; and with these modifications an order, to take effect September 1st, 1890, will issue in accordance with the findings and conclusions of the Commission reported June 7th, 1890.

RICE, ROBINSON AND WITHEROP *v.* THE WESTERN NEW YORK AND PENNSYLVANIA RAILROAD COMPANY.

Decided originally November 30, 1888. Opened for further testimony April 15, 1889. Additional testimony taken at Titusville May 16 and 17, 1889, and at Washington October 17 and 18, 1889. Submitted February 22, 1889. Decision filed September 5, 1890.

1. The acquisition and consolidation by a rail carrier under one system of management of different competing lines of road serving the same territory in the carriage of competitive traffic to the same markets, cannot create a right on the part of the carrier to take advantage of the consolidation of interests to deprive the public of the benefits of fair competition, nor afford warrant for oppressive discrimination with a view to its own interests, such as equalizing profits from its several divisions, by making rates and charges for one division that give profitable markets to a portion of its patrons, and higher rates and charges for another division that are destructive to the pursuits of other patrons who are competitors in the same business; but its duty to the public requires that its service must be alike to all who are situated alike.

2. A carrier that employs different methods for the transportation of petroleum oil and its products in car-loads—for example, tank cars in which the oil is carried in bulk, and box cars in which the oil is carried in barrels—is not relieved from its duty in respect to equality of rates by the difference it makes between its patrons in the mode of carriage, but its charges for like quantities carried between like points of shipment and destination must be equal upon the commodity itself, irrespective of the mode of carriage or the tank or barrel package in which it is contained. Differences in circumstances and conditions of transportation that are of a carrier's own creation or connivance, or that by reasonable effort on the part of a carrier might be avoided, cannot justify exceptional rates.

3. A tank used in carrying oil is deemed by carriers part of the car, and the rate is charged only upon the contents, while for carriage in box cars the barrels containing the oil are treated as freight, and the rate is charged both for the weight of the barrel and its contents. The prevention of this prejudice to shippers in barrels requires that for

purposes of rates, when a carrier uses both tank and box cars for carrying oil in car-loads, the barrels shall be deemed part of the box car; and that, as in the case of transportation in tanks, the rate shall be charged only for the weight or quantity of oil carried, exclusive of the weight of the barrels, and be the same for like weight or quantity carried in tanks.

4. When a carrier engages in transporting oil in tanks, and also in barrels conveyed in box cars, in car-loads, and charges for the weight of the barrel as well as the oil carried by the box-car mode of transportation, but for the weight of the oil only when carried in tanks, it unjustly discriminates between shippers, and subjects the traffic to undue prejudice and disadvantage.

5. The fact that a carrier does not own tank cars, but accepts and uses such cars supplied by some of its patrons for their own traffic, is unimportant so far as rates are concerned. It is a carrier's duty to equip its road with instrumentalities of carriage suitable for the traffic it undertakes to carry, and to furnish them alike to all who have occasion for their use, and its duty to furnish equipment can not be transferred to nor required of shippers. When a carrier accepts and uses cars for transportation owned by shippers or others, in legal contemplation it adopts them as its own for purposes of rates and carriage, and neither the manner of acquiring cars, nor inability to furnish its general patrons the use of cars similar to those furnished by some shippers for their own traffic, can excuse or justify a carrier for discrimination in rates that may give one shipper advantages over another; nor can any device, such as payment of unreasonable rent for use of cars furnished by shippers, be practiced to evade the duty of equal charges for equal service.

6. The allowance by a carrier to a shipper of oil in tanks, of 42 gallons, or any number of gallons, from the actual quantity put in a tank, for alleged leakage or waste in transportation, is, in the absence of a corresponding allowance to shippers in barrels, unjust discrimination and unlawful.

7. The classification of petroleum oil and its products in car-loads adopted and generally applied by carriers is the same, and the rates upon oil and its products should correspond with their classification and be alike.

M. J. Heywang, for petitioners.
J. D. Hancock, for respondent.

REPORT AND OPINION OF THE COMMISSION.

SCHOONMAKER, *Commissioner:*

Upon the testimony originally given in this case and the facts then presented, a decision was rendered against the complainants on the 30th day of November, 1888, reported in 2 I. C. C. Rep. 389.

Several other cases involving the same or similar questions were about that time brought before the Commission by the Independent Refiners of Western Pennsylvania, and, it appearing that a much fuller investigation of the general subject of oil transportation would be made in those cases, the Commission thought these petitioners should have the benefit of any additional facts that might be shown, and accordingly, on application of petitioners, an order was made on the 15th day of April, 1889, opening this case for further hearing, and providing that the testimony taken in the other cases should apply in this case, so far as it might be relevant.

The new cases proceeded to a hearing and a large amount of testimony was taken, both at Titusville and at Washington, and important additional facts were elicited that are pertinent in this case. The general ground of complaint in the first instance was, and still is, that the rate for the transportation of refined oil in car-loads from Titusville to Buffalo on shipments in barrels is unreasonable and excessive. The rate charged is 8½ cents per hundred pounds, or 34 cents a barrel, in car-loads, upon an estimated average weight of 400 pounds for the barrel and its contents.

The case as at first presented rested mainly upon a comparison of the existing rate with a former rate of 25 cents a barrel from Titusville to Buffalo, and with the proportion received by the respondent of a joint through rate from Titusville to the seaboard *via* Buffalo. This presentation of the case was not considered to furnish satisfactory reasons to order a reduction of the rate. The testimony since taken supplies facts that materially change the aspects of the case and introduce other and more important elements tending to show unjust discrimination between shippers of oil in tanks and in barrels, and in other particulars.

The additional facts deemed material and now found in the case are as follows:

Prior to April 5th, 1887, the respondent and other rail carriers of oil in the territory in question made their rates upon it by the barrel, which embraced no charge for the weight of the barrel, and for about three years the tariff rate to Buffalo was 25 cents a barrel. These rates applied alike to oil and its products.

When the Act to regulate commerce took effect, April 5, 1887, and the new Official Classification became operative, oil was placed in the 5th class, and the rate from Titusville to Buffalo was established at 8½ cents per hundred pounds, including the weight of the barrel, which advanced the charge to 34 cents per barrel. This rate for transportation to Buffalo has since been maintained. At that time, and until about September 3, 1888, the rate upon oil from Titusville to the seaboard at Perth Amboy *via* Buffalo, over the line of the respondent and the Lehigh Valley road, was 52 cents per barrel. This did not include a charge for the weight of the barrel.

About September 3, 1888, the respondent and other carriers changed the rate to the seaboard, by advancing it from 52 cents to 66 cents per barrel, which included a charge for the weight of the barrel; and a like charge for the weight of the barrel to all other points of shipment was also established. By these changes the advance in the rate to Buffalo from Titusville was 9 cents a barrel, and to the seaboard 14 cents a barrel. The weight of the barrel added nearly two tons to the weight of the car-load of oil in barrels, and an increased charge of about $3.40 to the car-load.

The alleged ground for this advance was an expression in a decision of the Commission in the case of Rice *v.* Louisville & Nashville R. Co., 1 I. C. C. Rep. 552. The respondent was the first to discover a reason for advancing rates in that decision. The discovery, however, and the respondent's application of it, were thought to be advantageous to carriers, and the advance was adopted by other carriers operating in the same territory and carrying to interior

points and to the seaboard. Objections were made to the change by some connecting roads that received the traffic from the initial carriers, but these objections were overborne, and shippers in barrels, in competition with tank shippers, have been subjected to the additional charge for the weight of the barrel to the present time.

The materiality and importance of the charge for the weight of the barrel arise from the relative rates made for the contemporaneous transportation of oil in barrels and in tanks. The respondent and other carriers, in making their rates for the transportation of oil, profess, under the rulings of the Commission, to equalize the rates on oil by the respective modes of carriage; but by charging for the weight of the barrel, when oil is shipped by that mode, and not for the weight of the tank for that mode of shipment, the shipper in barrels pays a higher rate for the carriage of his oil to the extent of the weight of the barrel. The respondent in this case furnishes neither the barrels nor the tank cars, but both are furnished by the shippers. The cars, whether tank cars or box cars, are in each case dead weight, and in the case of the tank cars the carrier pays the shipper for their use. The tank cars used by the respondent are the horizontal tanks, and they are not of uniform weight or capacity. The earlier tank cars weigh about 20,000 pounds, and their capacity is about 72 barrels, or 3,600 gallons. The later tank cars are larger, and weigh about 24,000 pounds, with a capacity of 122 barrels, or 6,100 gallons. The cost of the tank cars is from $600 to $634.

An ordinary box car of largest size weighs about 24,500 pounds, and carries 60 barrels of oil as a car-load quantity. The actual weight of a barrel is from 63 to 65 pounds, and the cost of a barrel varies from $1.05 to $1.18. For transportation purposes, carriers, including the respondent, estimate the average weight of barrels at 75 pounds, and the weight of the oil in the barrels at 325 pounds, so that on this basis a shipper in barrels is charged for carrying 400 pounds to the barrel. The average weight of a barrel of oil carried in tanks, as estimated by the carriers, is 315 pounds. The box cars commonly used for oil transportation are inferior

and older cars, for the reason that they are supposed to be rendered unsuitable for the carriage of general freight by the leakage and odor of the oil, and these usually weigh from 20,000 to 22,000 pounds. The cost of a box car is about $450.

Shippers in tanks are charged and pay only for the weight of the oil carried. Shippers in barrels are charged and pay the same rate for the oil carried, and in addition thereto for the weight of the barrels. At an average weight of 65 pounds per barrel a car-load of sixty barrels amounts to 3,900 pounds—practically two tons. In the case of an ordinary car-load quantity of twelve tons the tank shipper has two tons more of oil carried for the same aggregate charge than the shipper in barrels. The respondent and other carriers also for a considerable period made an allowance to shippers in tanks, of 62 gallons from the shell capacity of the tank, for alleged waste or leakage in transportation. This allowance was reduced about the 1st of June, 1889, to 42 gallons to a tank, which is still allowed. No corresponding allowance has been made at any time to shippers in barrels. The dead weight of tank cars and of box cars used for carrying oil with the additional weight of the barrel does not widely differ. The smaller tanks and the box cars generally used for oil weigh, respectively, about 20,000 pounds. The larger tanks, which weigh about 24,000 pounds, are substantially equal to a box car used for oil with the weight of sixty barrels added.

The actual charge by the respondent for carrying oil in barrels from Titusville to Buffalo is 34 cents a barrel, or 8½ cents a hundred pounds. This rate, on the basis of the estimated average weight adopted by the carriers, is 27.62 cents for the oil and 6.37 for the barrel, or, on the basis of the actual average weight of the barrel of 65 pounds, is 28.47 for the oil and 5.52 cents for the barrel. For carriage in tanks the rate is 26 cents a barrel for a like quantity of 50 gallons, at an estimated average weight of 315 pounds to the barrel. The rate on crude oil and on distillate, a partially finished product of petroleum requiring an additional expense of from one-eighth to one-quarter of a cent a gallon to become refined

oil, is 15 cents a barrel from Titusville and from Glade Run to Buffalo, but no distillate is shipped from Titusville.

The charge for transportation from Titusville to Perth Amboy by the respondent and its connecting carrier, under their joint tariff, is 66 cents per barrel, or 16½ cents per hundred pounds, being an advance of 3½ cents per hundred pounds over the rate charged before the weight of the barrel was included. The contemporaneous rate for the transportation of oil in tanks to the seaboard is 52 cents per barrel, for 50 gallons of oil, at an estimated weight of 315 pounds to the barrel, being a difference of 14 cents a barrel in favor of the shipper in tanks, or $8.40 a car-load to the disadvantage of the barrel shipper.

The respondent gave evidence tending to show that the cost to the carrier for transporting oil in barrels from Titusville to Buffalo was 22 cents a barrel, and that the revenue to the carrier is greater from transportation in tanks than in barrels; also, that the operating expenses of its branch line from Titusville to Buffalo *via* Brocton, by reason of heavy grades, less cars to a train and lighter tonnage, are considerably larger than over its branch road *via* Olean to Buffalo. The distance from Titusville to Buffalo *via* Brocton is 120 miles, and the rate per ton per mile on oil in barrels is 1.416 cents. Glade Run is near Warren, a station on the Olean branch, and is 130 miles from Buffalo. The rate per ton per mile on crude oil and distillate from Glade Run to Buffalo is less than 7.3 mills, or about one-half the rate per ton per mile from Titusville. The actual cost of the service for transportation in barrels and in tanks cannot be found with accuracy from the evidence. The statements submitted to show particulars of cost lacked the precision and completeness necessary for satisfactory conclusions.

The market price of refined oil in the Buffalo market at the time of the hearing, and for a considerable period before, was 6 cents a gallon. Previous to 1886 oil sold for 8½ cents in the same market. In 1887 it declined to 5½ cents per gallon. Since that time it has varied from 6 to 7⅞ cents. Some witnesses claimed that a fair profit was made upon refined oil at 6 cents per gallon in the Buffalo market at the rate charged

shippers in barrels. The complainants claimed there was no profit in that price at the rate charged barrel shippers, but, on the contrary, a loss, and gave evidence tending to show the fact.

The cost of crude oil is conceded to be 3 cents per gallon, and according to the testimony of complainants the cost of manufacturing crude into refined oil is one-half of a cent a gallon, and the whole cost of delivery to the trade in Buffalo, including freight, incidental expenses of business at Buffalo and return of empty barrels, 2½ cents per gallon more, making in all 6 cents per gallon, or just the selling price. This does not include other expenses of the business, such as the cost of re-coopering and re-filling empty barrels, inspection charges, insurance and other items, stated to amount collectively to from 13 to 25 cents per barrel, nor the depreciation of plant, cost of repairs, interest on capital, or service in the business of proprietors.

Witnesses for the respondent, who are also refiners at Buffalo and shippers of distillate and crude oil from Glade Run to Buffalo, give the total cost of delivery to the trade at Buffalo, excluding substantially the same items excluded in complainant's estimate, at 5.058 cents per gallon. These estimates differ nearly a cent per gallon, and show that the computation is at fault on one side or the other, or indicate a difference in the management of the business. Both estimates, however, show quite clearly that when all the items properly chargeable to the expenses of the business are taken into account, there remains no profit to the refiner who ships in barrels, but that the business is carried on at material loss. The action of the carriers in the inequitable adjustment of relative charges for tank and barrel transportation, if not wholly responsible for, is believed to have contributed to, this condition.

Oil barrels returned empty from Buffalo to Titusville are in the fourth class of the Official Classification, and bear a rate of 10 cents per hundred pounds in car-loads. The evidence does not show the weight charged for the empty oil barrels when returned, but assuming it to be 70 pounds, the

charge per barrel would be 7 cents. No corresponding charge is made for the return of empty tanks.

Under the Official Classification, which ostensibly applies to the respondent and other roads operating in the same territory, petroleum and its products are classified in the 5th class, and it is this classification that gives the rate of 8½ cents per hundred pounds from Titusville to Buffalo. Notwithstanding this classification of petroleum and its products, the respondent makes tariff rates from Glade Run and other points in the oil region to Buffalo of 15 cents per barrel on crude oil and distillate, less than half the rate on refined oil, and of 20 cents per barrel to Rochester, also less than half the rate on refined and lubricating oil. Refined oil has also been carried by the respondent at 15 cents a barrel from Glade Run to Buffalo at the same time that the rate on like oil from Titusville to Buffalo was 34 cents a barrel. The complainants have no refinery at Buffalo, and refine their oil at Titusville. But the parties for whom crude oil and distillate have been carried from Glade Run to Buffalo operate a refinery at Buffalo, and are competitors of complainants in that market. And they ship in tanks.

Some of the rates charged upon other commodities are as follows: On lumber from Kinzua to Buffalo, 121 miles, $1 per ton; from Kinzua to Rochester, 166 miles, $1.35 per ton; on wood, staves, shooks, heading, or stave bolts, last blocks, piles, etc., 90 cents per ton from Titusville to Buffalo. The rate on petroleum products from Titusville to Buffalo is $1.70 per ton. A tariff on these products corresponding to the lumber and wood tariff would give a rate of 20 cents per barrel from Titusville.

Questions not involved in the former hearing of this case are pointedly presented upon the present investigation, and whether raised or not by the pleadings in this particular case is immaterial. This case was opened to have the benefit of the general investigation. The leading and most important of these questions is the discrimination in the charges for transportation in tanks and in barrels. The fact is indisputable that the tank shipper pays less for the transportation of his oil than the barrel shipper, and that the difference in the

charges practically extinguishes the profit of the barrel shipper, and gives his competitor who ships in tanks the benefits of the market.

The carrier seeks to justify this discrimination on two grounds. One is that the transportation in tanks is more profitable to the carrier in yielding a larger revenue above the expenses of his service. And under this head the respondent includes the expenses of maintaining and operating the two divisions of its railroad property, *via* Brocton and Olean, respectively. The other ground is predicated of some supposed rulings of the Commission, interpreted as requiring, or at least authorizing, carriers to charge barrel shippers for the weight of the barrels, though no corresponding charge or equalizing method is applied to competing and contemporaneous tank shippers.

These two grounds need not to much extent be separately considered for the purposes of this case. The principle to be applied will substantially cover both points. The different lines or divisions of the respondent's railway property constitute one system, under one management and control, and not two separate and independent systems. The routes are practically parallel lines, though traversing different districts to reach a common destination and differing considerably in some of their characteristics. The traffic originates in the same or contiguous territory, where the cost of production and manufacture is necessarily the same for the different competitors engaged in the business, and the transportation is to the same markets, where the market price is the same and is fixed by those who can reach the markets at least expense. Under such circumstances a difference in the transportation charge so great as not merely to materially diminish but to destroy entirely the profits of the producer and shipper, and practically prohibit his business by making it ruinous to continue it, cannot be justified by the carrier on the ground that one division of his railway used for such transportation is somewhat more expensive to operate than another division, or that the volume of traffic on the more expensive division is less than on the other; nor upon the theory that every division or branch of a carrier's system

should yield the same proportion of revenue to its treasury, and that different scales of rates may be maintained for that purpose. If a carrier controls and operates a system containing dissimilarities between parts or divisions, as is usually the case, it must expect to accept some of the consequences of the diversity. This rule applies to all other business. A producer of grain from different farms can command no difference in price for his product by reason of differences in the cost or the productiveness of the land or in the expense of cultivation. A producer of oil or of coal must accept the market price, whatever the difference in cost of production in different localities or the expense of reaching the market. These are conditions to which the public must submit under the laws of trade. A common carrier, as a public agency, is not at liberty to consult only its own interests by equalizing its profits at the expense of the public, and to disregard the interests of the public. It may establish its rates to yield fair remuneration for its services, subject to prescribed limitations, but it may not treat every division of its system serving a common territory as an independent property, and vary its rates to suit the conditions of each piece of property, and thereby arbitrarily exact charges that make a profitable market for one portion of its patrons and that exclude others similarly situated from the same market.

But another and quite different consideration applies to the situation. If the two parallel divisions were in fact controlled and operated as independent lines, competition would inevitably give the public the benefits of equal rates. By consolidation under one management the respondent undertakes to make differences in rates that would be impossible if the lines were competitive. Consolidation would become a public evil if it could be used for such purposes. When actual competition exists by independent lines it is the universal rule that the rates between common or like points are the same, or, if a difference is made, the line that has disadvantages of some character, such as longer haul, circuitous route, or heavier grades, gives the lower rate. In such instances cost of operation, volume of business, or other incidents

of transportation, cut no figure at all. The primary consideration is to induce business by favorable rates. Upon considerations recognized by carriers themselves, therefore, undue weight is not given to characteristics of line, or cost of operation, as grounds for discrimination in rates.

The carrier's reasons, from the standpoint of its own interests, for controlling and operating an expensive or unprofitable adjunct to its system may be sufficient and legitimate, but whatever such reasons may be they are not to prejudice the public by furnishing an excuse for unreasonable or prohibitory rates upon traffic competitive with like traffic carried over other divisions of its system from substantially the same place of origin to the same markets. A suppression of competition by the absorption of parallel lines can not clothe a carrier with a right to deprive the public of fair and equitable charges for its services, or to unjustly discriminate between its patrons. This is in plain violation of the provisions and purpose of the Act to regulate commerce.

The requirements that rates must be reasonable, that they must not unjustly discriminate, and that traffic must not be subjected to undue prejudice or disadvantage, apply to every part of a carrier's system and to all whom it serves, and relative reasonableness, as the Commission has frequently ruled, is an essential part of the duty imposed by these enactments. When a carrier assumes control of a system consisting of different roads or lines serving the same general territory, or reaching a common terminus, it takes the responsibility that its rates shall be relatively reasonable upon its different lines as fully as that they shall be reasonable on any single line. And rates made on any of such lines, or for any class of patrons, furnish evidence of what may be relatively reasonable for its other lines, or for competitive traffic. For purposes of management and operation the respondent makes its different divisions a unit, but for purposes of rates it makes them distinct and widely different. This ignores any duty to the public founded on its proprietorship and management and recognizes only the supposed interests of the carrier. Although this theory is by no means uncommon, it is an error that the law can not sanc-

tion. The duty of the carrier to the public is inseparable from its franchise and function, and a fundamental part of this duty is to render reasonable and impartial service. The manner of doing this is for the carrier to arrange, in view of the circumstances of its property and its business; but the duty is imperative. It is entitled to reasonable compensation and to revenue adequate for just and necessary purposes acquired by fair charges, but it may not arbitrarily impose charges on some portions of its lines destructive to the business interests of its patrons, with the view of equalizing revenues and profits from all portions of its property and from all kinds of traffic. A rule of this kind is believed to be nowhere applied by carriers, but average revenue is understood to be generally acquired by an equitable distribution of charges that will work no substantial injustice to traffic or to competitors in business. The respondent's contention, therefore, that the public has no concern in rates that are relatively reasonable and equal, so long as they are reasonable for the carrier upon a particular fraction or portion of its railway, considered as a separate entity, is not sustained. It is a form of unjust discrimination to be corrected.

With respect to the discrimination arising from the charge for the weight of barrels relatively to tanks, it must be conceded that there was some color for it in language used by the Commission in one or two cases. But if the carriers had been more intent on giving effect to the evident purpose of the Commission to secure equality of charges for the transportation of oil in barrels and in tanks than to find a plausible reason for continuing their long-practiced discriminations in favor of tank shippers, they would have found ample reasons for a different course, and the rates on barrel shipments would not have been advanced. When the question was first presented to the Commission in the case of Rice *v.* Louisville & Nashville R. Co., 1 I. C. C. Rep. 503, it found on the part of the carriers the most unjust and injurious discrimination against barrel shippers in favor of tank shippers, and that this discrimination inured mostly to the benefit of one powerful combination owning the tanks used for the transportation of its oil. This discrimination

consisted mainly in making a low lump or gross charge for tank transportation without regard to quantity. For example, a tank shipper for a gross sum would perhaps have double the quantity of oil transported for the rate a barrel shipper was required to pay. The paramount aim in the case cited was to do away with this abuse and to secure equal charges for equal quantities transported. The question of charging for the weight of barrels as a feature of discrimination was not mooted or in any sense prominent in the case. The other questions were so much more important and conspicuous that the question of barrels may not have had the consideration it deserved. It was not discussed in the opinion, and only a passing allusion was made to it. All that was said in the opinion proper was as follows: "The rule should be to consider the tank a part of the car itself, and for the load carried in it the charge ought to be the same by the hundred pounds as is made on the transportation of barrels of oil in car-load lots in other cars. Even then the shipper in barrels is at some disadvantage, for he must pay freight on barrels as well as on oil; but this, as between him and the carrier, is not unjust."

This qualified and incidental remark, which is rather a statement of a prevailing practice than a ruling, is all that is said in the opinion on this point, and it is quite evident that the practice was not then considered a controverted question upon which a ruling was to be made, but that the reference to the subject was only a statement of the relative condition that applied to barrel shippers. The remark that charging for barrels is not unjust, as between the shipper and the carrier, may be correct if that were the only mode of shipment, but where barrels are in competition with tanks upon the line of the same carrier the situation is different and the disadvantage is involved to which allusion was made.

In the orders made against the respective carriers of record in that case the following language is used: "That no higher charge can rightfully be made by defendant for the transportation by the hundred pounds of such oil in barrels, including the barrels, than is or shall be contemporaneously made for the transportation by the hundred pounds in the tanks."

Substantially the same language was used in each of the several orders. It is very apparent that the orders were not intended to be mandatory upon the carriers to charge for the weight of the barrels, but were rather in the nature of a prohibition against making a higher charge including the weight of the barrel for transportation in barrels than in tanks, and the only legitimate inference from the language of the opinion and the orders is that the custom of charging for the barrel weight was recognized, and as then seen was regarded as a permissible minor incident of transportation.

Quite naturally these references to barrels were followed by the Commission in the later case of Scofield *v.* Lake Shore & Michigan Southern R. Co., 2 I. C. C. Rep. 90. In the opinion in that case it was said: "The shipper of oil in car-load lots in barrels pays for the full weight of the barrel in every instance as well as the oil, and furnishes the barrels himself, and if his barrels are hauled back to him he has to pay for that service as upon other freight. The inequalities of the transaction are very great and they are all on the side of the shipper of oil in tanks." (2 I. C. C. Rep. 114.)

And further (2 I. C. C. Rep. 115), after saying that the same rate must be made on oil in tanks and barrels, it is added: "The carrier, of course, has the right to charge for the weight of the barrel as part of the freight." This also is only a statement of an existing practice incidental to transportation in barrels, and not having been challenged as a distinct form of discrimination was not discussed or condemned, although its disadvantage to the barrel shipper was seen and noted. The utmost that can be claimed from anything said in these two cases is that the Commission acquiesced in the practice of charging for weight of barrels, and they furnish no shadow of support for the pretense that carriers must make such charge.

Any attentive perusal of the opinions in the Case of Rice, and also in the Case of Scofield, can not fail to convince a fair-minded person, whether carrier or shipper, that the logic of the discussion and the whole tenor of the reasoning are against the practice of charging for the weight of barrels by

carriers that employ the two modes of transportation in tanks and in barrels. The pervading and paramount thought of the argument is for equality of charges for shipment by the two modes, pound for pound and gallon for gallon. Whatever stood in the way of such equality was necessarily condemned by the logic of the opinions, and the reasoning was quite as fatal to one kind of discrimination as to another. The one great feature of discrimination then uppermost, of charging only a lump sum for transportation in tanks, regardless of quantity, was found to be an abuse of such magnitude that its correction, and the substitution of a method of charges based upon actual weight, were the engrossing objects in the minds of the Commission, and probably explain why less prominent matters did not receive fuller consideration. If carriers had been governed after that decision by the reasoning and plain purpose of the Commission, and had been disposed to co-operate in good faith in giving effect to that purpose, entire equality among competitors would have been secured, and the question now under consideration would have been avoided. There would have been no advanced rates to cover the weight of barrels where no such charge had previously been made, and the practice of charging for barrel weight, where it then existed, would have been discontinued wherever tanks and barrels were in competition.

The question of the lawfulness of charging for the package in cases of shipment in barrels, in car-loads, when no charge is made for the package when tanks are used, both modes of transportation being employed by the same carrier, is now for the first time, in this and other cases pending before the Commission, directly and distinctly presented for decision, and it must be determined under the provisions of the Act. The discussion in the Case of Rice, before cited, and also in the Case of Scofield, really covers the ground, and little that is new in the way of argument can be added. What mostly remains to be done is the application of the argument in those cases to the question now in controversy. And for this purpose some reference to the aims of the statute, as declared by its framers, will be of service.

The report of the Senate Committee that preceded the enactment of the law, in defining the legal status of common carriers, says: "A common carrier must be able to carry for all alike, and can not show any preference without making himself liable to damages;" and, adopting the language of a text-writer, continues: "'The very definition of a common carrier excludes the right to grant monopolies or to give special or unequal preferences. It implies indifference as to whom they may serve, and an equal readiness to serve all who may apply in the order of their application.' It will be seen by the foregoing brief general statement of the law as applied to common carriers that no common carrier has the right under the common law to discriminate between persons or places, or to give preferences in any manner. The theory of the common law is that all who are situated alike must be treated alike." (Pp. 39, 40.)

At page 41 it is further said: "The only reason for the existence of railroad corporations is that they might undertake a duty which the State was unable or unwilling to perform, and to that extent they exercise a public function. . . . And as the agents of the State in supplying the community with facilities for transportation, the railroad corporations necessarily rest under the same obligations to deal fairly and equitably with all its citizens, without favoritism or discrimination, as the State itself."

At page 183 it is said: "A railroad corporation has been looked upon by its managers as an association of individuals engaged in the furnishing and selling of transportation for their own advantage and free to conduct the business in their own way, as individual mercantile enterprises are conducted. They have been slow to recognize the public nature and public obligations of the corporations under their control, and to realize the fact that these obligations impose restrictions upon their management that do not affect the freedom of action rightfully conceded to the individual trader." And at page 191: "That the discriminations universally practiced in favor of the larger shippers are unjust and prejudicial to the public interest, because their tendency is to unduly concentrate the control of commerce in the hands of a few."

And in conclusion the Committee say: "The provisions of the bill are based upon the theory that the paramount evil chargeable against the operation of the transportation system of the United States as now conducted is unjust discrimination between persons, places, commodities or particular descriptions of traffic. The underlying purpose and aim of the measure is the prevention of these discriminations, both by declaring them unlawful and adding to the remedies now available for securing redress and enforcing punishment, and also by requiring the greatest practicable degree of publicity as to the rates, financial operations, and methods of management of the carriers."

In respect to the burden of proof when disparities in charges apparently in violation of the Statute appear by the carrier's schedule, the Committee declared the rule they thought should be applied, as the Commission has applied it from the first. At page 198 they say: "It is also proposed to place the burden of proof upon the railroads, where it properly belongs, and to compel them to justify any violation of the general principle that no greater charge shall be made for the shorter than for the longer haul." This applies to the fourth section, but the same rule necessarily applies in the case of apparently unjust discrimination under the second section. The Statute would be nugatory for any beneficial purpose under a construction placing the burden of proof in such cases upon the complainant.

The imperative mandate of the Act is that there shall be no unjust discrimination in rates or charges, and that there shall be no undue or unreasonable prejudice or disadvantage to traffic in any respect whatever. These are the tests by which the acts of carriers are to be judged. Has the respondent fairly acted in the spirit of these requirements of the Statute and of justice, or has it sought to evade them? The traffic which is the subject of controversy in this case is oil and its products. Many competitors are engaged in the business, and the competition is active. One competitor is able to own and furnish tanks. The carriers, for reasons of their own, and in the exercise of their own discretion, without governmental constraint of any kind, furnish two modes

for conveyance of the traffic. The traffic is the same by whichever method transported. Its production is large and the consumption is extensive. The rates alone may make the business profitable or otherwise. The action of the carriers themselves in fixing rates gives advantages and preferences to shippers by one mode not given to shippers by the other. The results are profitable business to one class of shippers and losses to the other class. For these results the carrier is directly responsible.

The carriers say in their own extenuation that if the shippers in tanks have advantages over shippers in barrels it is no more than they are entitled to, for the reason that they furnish their own tanks, which are an improved mode of shipment and the product of enterprise and capital. There is no force in the fact that the tank shipper furnishes his own tanks. It is not the business of a shipper to furnish the vehicle of transportation. That is the duty of the carrier. Under its franchise the carrier must do more than construct his roadway. He must equip it with the means of transportation, and these means, of whatever style or pattern, must be open impartially to all shippers of like traffic. If the carrier hire or arrange in any manner for the use of vehicles he does not own, he has one of two things to do: He must furnish like vehicles to all competitors in the traffic, or must be careful to make no unjust discrimination and give no undue preference in his rates. For all transportation purposes so far as the public is concerned a carrier makes every vehicle his own that he uses upon his road, no matter how acquired. His responsibility to the public is the same in respect to rates and other transportation duties, whether he owns or hires his vehicle. When, therefore, he accepts tank cars owned by shippers who can afford to build and furnish them, and has none of his own to furnish to other shippers, but can only supply box cars in which barrels must be used for the oil, he is bound to see that he gives no preference in rates to the tank shipper, and that he subjects the barrel shipper to no disadvantage. It is at this point that the duty of the carrier to the public is rigorous, and where no plea of inability to furnish tanks, or other excuse, is admissible.

If the carrier, whose duty it is to furnish vehicles of transportation, cannot afford to do so impartially for all its patrons engaged in like business, the ordinary shipper is likely to be less able to afford it, and cannot be required to perform the carrier's duty. He might as well be asked to furnish motive power as vehicles of carriage. The carrier can not transfer his own responsibility to the shipper. The duty to furnish impartial transportation cannot be evaded on any pretext. It is fundamental and imperative. The mode of doing so, in the absence of specific legislation, is in the discretion of the carrier, subject to the obligation that rates shall be equal and reasonable. The particular manner in which rates shall be equalized for the transportation of oil in tanks and in barrels is in the first instance for the carriers themselves to determine. But this they have as yet failed to do. It is idle to pretend that it is not discrimination to charge for the weight of barrels and not for the weight of tanks, or in other words for only net weight in one case and for both dead and net weight in the other case. At a difference of $3.40 a car-load, the difference to the complainants upon a monthly shipment of 200 car-loads is $680, which the barrel shipper pays in excess of the tank shipper.

For transportation purposes both tanks and barrels are only packages in which the oil is carried. The tank, as the Commission has said, is part of the car, and for purposes of rates, in the absence of any other mode of equalization by carriers, the barrel should be deemed part of the car. The carrier furnishes neither tanks nor barrels. Both are furnished by the shipper. The carrier hauls the tank free of charge and pays the shipper for its use. But he pays the barrel shipper nothing for the use of the barrels, and charges for the transportation. The Commission has said that this is a disadvantage to the one class of shippers. It might have said more, and if the point had been presented for decision probably would have done so. It is now adjudged that it is unjust discrimination.

The correction of this discrimination requires that in the transportation of oil in car-loads, barrels as well as tanks, shall be regarded as only a means of carriage.

of the commodity, and that the rates shall be imposed upon the commodity only and not upon the barrel package, where a carrier uses both modes and hauls tanks free. The Commission in former cases has determined that the rate shall be based upon the hundred pounds, and it is now decided that when oil is carried in barrels in car-loads in competition with oil in tanks the weight of the barrel shall not be included for purposes of rates, but oil and its products carried in barrels must in respect to rates be upon an equality with oil and its products carried in tanks.

There is no injustice in this of which the carrier can rightfully complain. The situation is created by the carrier itself, and the rule of equality of charges is only an application of the principle that a carrier shall not take advantage, nor suffer advantage to be taken, of a condition of its own creation.

This point was considered in the case of the Business Men's Association of Minnesota *v.* Chicago, St. Paul, Minneapolis & Omaha Railroad Company, 2 I. C. C. Rep. 65, and the distinctions to be observed in respect to the nature of dissimilar circumstances and conditions clearly pointed out. It was said, in substance, that when a carrier claimed to act under a compulsion of circumstances and conditions of his own creation or connivance in the making of an exceptional rate, this could not avail him; or if he claimed a compulsion which he could obviate by reasonably fair and just exertion on his part, in the making of an exceptional rate, this could not avail; but that if the carrier, acting in good faith, under a compulsion of circumstances and conditions beyond his control, not of his connivance and which he could not obviate by any reasonable fair and just effort on his part, and to avoid overwhelming loss, adopts exceptional rates, then the law may justify him in doing so.

The adoption of cars of peculiar construction better adapted for carrying oil, whose use is limited to shippers who furnish them, and the inability or disinclination of a carrier to furnish like cars for other patrons in the same business, cannot impair or excuse its legal obligation to perform impartial service for all its patrons. Nor is the duty affected by the cir-

cumstance that the barrel package belongs to the shipper, and may have a value as merchandise. In the carriage of oil the barrel is not shipped as merchandise but as a package or means of transportation of the oil. It is not understood on any evidence before the Commission that the shipper of oil in barrels receives any compensation for his barrels in addition to the price of the oil, but it is understood that the empty barrels are in general returned to the shipper at his expense. This, at least, appears upon evidence to be the case in respect to the shipments made over the respondent's road. There are other circumstances connected with the carriage of oil in barrels tending to give the carrier revenue from the car carrying barrels not earned by a tank car. The box car may carry a return load, but in the section of country now in question there can be no return load for a tank car. Besides, the carrier pays a sum in the nature of a rental for the use of the tank car, whether loaded or empty. And, as has been shown in the statement of facts, the dead weight of an ordinary tank car is not materially different from the ordinary box car used for oil, with the weight of the barrels added, although the fact is not important upon the question of rates.

A few citations may here be made from previous opinions of the Commission in support of the views expressed. In the Case of Rice, before cited, it is said: "The carriers do not provide accommodations for the two methods of transportation; they provide them for one method only, and in doing so they fall short of what, in respect to all other kinds of traffic, is practically the universal custom. It is from this fact that the oppression complained of in these cases springs. The carriers offer no choice to their customers; they fail to provide for the general use of all who may desire it the rolling-stock for transporting, in the way they say is most profitable to themselves, this very large traffic; but they give to the dealers who will perform this duty for them rates so favorable as to put those who adopt the only method the carriers provide at such disadvantage as to preclude successful competition." (1 I. C. C. Rep. 543.) Again: "The carrier has no right to hire rolling-stock and then allow it to be used exclu-

sively by one class of persons on such terms as will drive out of business those who are compelled to use its own rolling-stock in a competitive traffic. . . . The tank cars which are furnished to the carrier by shippers, whether the use is paid for or not, ought properly to be held for the use of all; but if this is found impracticable, it is very certain and very obvious that proprietorship of the car for the use of which the carrier pays, as it generally does, can fairly entitle the owner to no special consideration in the making of rates." (1 I. C. C. Rep. 548.)

Again: "We hold, therefore, that the fact that one consignor furnishes a car for hire to the railroad company for the transportation of his oil is no ground whatever for a discrimination in rates in his favor against another consignor who must ship in the cars the carrier supplies." (1 I. C. C. Rep. 549.) And again: "We find, then, on a careful review of the testimony in this case and after full reflection, that no sufficient reason is shown to justify the defendants making a distinction in their charges as between the parties employing the two different modes of carriage. We hold that when transportation is in car-load lots the same charge by the hundred pounds should be made upon all consignments from and to the same points." (1 I. C. C. Rep. 552.) The language in respect to barrels, before quoted, follows in this connection.

In the Scofield Case it is said: "The preference thus given to oil shipped in tank cars as against oil shipped in stock cars in car-load lots, is, we think, unlawful, and must be regarded as forbidden by the Act to regulate commerce. The defendant should carry the same weight for the same price in the one car as in the other, and the rate should be made by the hundred pounds instead of by the barrel. . . . The tank is indeed the car, but in renting it from the shipper to haul his own oil the carrier pays him for furnishing a package for the oil, charges him nothing for the increased dead weight of the tank over and above that of the stock car, which upon an average is one thousand pounds. and pays him rental for hauling the empty tank car back to him as part of the transaction." (2 I. C. C. Rep. 114.) Again: "There appears to be no law that prevents a carrier in the course of his business

from arranging with the shipper to furnish cars for the shipment of his own goods at terms agreed upon between him and the carrier, but in every such transaction the carrier, at his peril, must see to it that neither directly nor relatively must a better rate be given to such shipper than to others engaged in the same business and making shipments of the same kind of goods who are dependent on the carrier for cars. From this it follows, as we decided in Rice's Case, that the carrier must make the same rates on oil, whether shipped in car-load lots in tanks or car-load lots in barrels." (2 I. C. C. Rep. 115.)

In a subsequent memorandum issued by the Commission, entitled "In the Matter of Relative Tank and Barrel Rates on Oil," 2 I. C. C. Rep. 365, it was declared that the action of the carriers from the Pennsylvania oil fields, adding the weight of the barrels to the weight of the oil for rate purposes, instead of continuing to make an equal rate upon quantity whether carried in tanks or in barrels, was unwarranted by the decision in the Rice Case, and the change was pointedly disapproved by the Commission. No order was, however, made in that particular matter, as it was not a regular investigation, and the carriers have failed to comply with the suggestions there made.

It thus appears that, in charging for the weight of the barrels as well as the oil, the carriers that make use of both modes of transportation have disregarded the principles plainly and emphatically laid down by the Commission in the cases cited, and have paid no attention to the subsequent official memorandum explanatory of the decisions in those cases, but have persisted in maintaining a discrimination against barrel shippers. An order requiring the discontinuance of the discrimination has therefore become necessary. And in making such an order the Commission is not embarrassed by any previous action on the subject. The nature of the questions in the former cases, the rules laid down and the unmistakable purpose the Commission had in view of equal charges for the different methods of shipment, have been sufficiently indicated. If the action heretofore taken has not been effectual to secure equality there is no legal bar-

rier to its modification or to necessary additional action. And even if an erroneous ruling has been made, the Commission has the right, and it is its duty, to correct it at the earliest opportunity, and of this the case in hand is an illustration.

The Commission is an administrative body, and its chief function is to correct abuses in transportation as fast as they are brought to its knowledge and can be acted on. The purpose of its creation is to protect the public against wrongdoing on the part of carriers and to bring the business of transportation in harmony with the rules of justice prescribed by the Act to regulate commerce. If a particular form of abuse which contravenes the law has not been made apparent in some case, or has been tolerated or even sanctioned by the Commission, it does not thereby become established beyond correction, but may upon further and fuller consideration be acted upon in such manner as justice to the public may seem to require.

As the high rate on refined oil, of which complaint is made in this case, results for the most part from the charge made for the weight of the barrels, the exclusion of the barrels will effect a reduction to correspond substantially with the rate upon oil in tanks, but a greater reduction may be necessary. The purpose of this decision is that the rates shall be the same upon oil in car-loads exclusive of the barrels, when carried in barrels, as when carried in tanks. It is quite evident from the testimony in the case that the rate upon barrel shipments from Titusville to Buffalo of which complaint is made is greater than the traffic will bear, and that the Titusville refiner can only carry on his business at a loss under the rate charged. It is also quite evident that a reasonable profit will remain to the carrier for barrel transportation at the same rate as for tank transportation. It is not intended to deprive the carrier of reasonable compensation, but the intention is to protect that portion of the carrier's patrons to whom it does not furnish the improved means of transportation given to others against unjust discrimination. And this applies as well to an unreasonable allowance to shippers who furnish cars for their own traffic, which may operate as

a rebate or device to reduce the rate, as to the rates charged.

Another feature of discrimination disclosed by the evidence is a rebate or reduction allowed by the carrier to the tank shippers of a certain number of gallons from the capacity of the tank on the theory of leakage or waste in transportation. For a considerable time the rebate allowed was 62 gallons, but since about June 1st, 1889, it has been 42 gallons, or 273 pounds, to a tank. The discrimination arises from the fact that no corresponding allowance is made to the barrel shipper. The evidence shows that the tank shipper bills his oil to his consignee at the full capacity of the tank, and receives pay for 42 gallons more than the quantity upon which he pays rates to the carrier. This is done by the consent of the carrier. The practice is so obvious and palpable a discrimination that no discussion of it is necessary.

The evidence also shows that the respondent has discriminated in favor of shippers at Glade Run by carrying crude oil and distillate, and even refined oil, in tanks, to Buffalo at less than one-half the rate charged for refined oil from Titusville, thus giving the Glade Run shipper a direct and material advantage over his competitor at Titusville. The reasons claimed for the discrimination are the greater advantage to the carrier from the use of tanks and the more favorable character of the line of road from Glade Run to Buffalo. These explanations, for reasons already considered, are insufficient. The geographical location of the competitors is not so dissimilar, and the physical condition of the two divisions of the road operated by the respondent are not so widely different that a like rate cannot be made upon the traffic without material injury to the carrier, and the crude oil and its partially refined products which are classified alike should be carried at the same rate to place the respective shippers upon an equality.

There are some other points partially brought out in the testimony that may involve unjust discrimination and require correction, such as the rate charged for the return of empty oil barrels as related to the return of empty tanks, the rate on tar from Buffalo to Titusville in effect for a period, and the

weight of 315 pounds charged for a barrel of oil in tanks as against a weight of 325 pounds for the like quantity of oil in a barrel. The attention of the carriers is directed to these points, and they are reserved for further consideration and action.

The conclusions of the Commission in this case are as follows:

That the rate on refined oil from Titusville to Buffalo in car-loads to be charged by the respondent be the same for the weight or quantity of oil carried, whether contained in tanks or in barrels, exclusive of the weight of the barrels; that a reduction of the present rate for transportation in barrels in car-loads be made, to make it equal to the present rate on oil carried in tanks; that the allowance of a rebate or reduction from the actual or shell capacity of tanks be discontinued; that the rate on oil and its products over the division of the respondent's road from Titusville to Buffalo *via* Brocton be not greater than the rate over the division of the respondent's road *via* Olean to Buffalo; that the rates on crude oil and its products over the respondent's road and branches thereof be the same for oil and its products for corresponding distances; and that the several practices of the respondent enumerated in the conclusions are unjust discrimination in contravention of the Act to regulate commerce.

The order will require the respondent to cease and desist from the practices described, and to comply with these conclusions, within thirty days from the service thereof.

THE BOARD OF TRADE OF THE CITY OF CHICAGO, COMPLAINANT, v. THE CHICAGO & ALTON RAILROAD COMPANY; THE CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY; THE CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY; THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY; THE CHICAGO, SANTA FE & CALIFORNIA RAILWAY COMPANY; THE ILLINOIS CENTRAL RAILROAD COMPANY; JOHN McNULTA, RECEIVER OF THE WABASH RAILWAY COMPANY, AND THE CHICAGO & NORTH-WESTERN RAILWAY COMPANY, DEFENDANTS; AND, AS INTERVENORS: THE ARMOUR PACKING COMPANY; GEORGE FOWLER & SONS; KINGAN & COMPANY, LIMITED; JACOB DOLD PACKING COMPANY; MORRISON PACKING COMPANY; ALLCUTT PACKING COMPANY; KANSAS CITY PACKING COMPANY; DES MOINES PACKING COMPANY; WILLIAM ELLSWORTH; HAAKINSON & CO.; JAMES E. BOOGE & SONS; SILBERHORN & COMPANY; McKEOWN & SONS; L. B. DOUD & COMPANY; BRITTAIN & COMPANY; JOHN MORRELL & COMPANY, LIMITED; T. M. SINCLAIR & COMPANY; WILLIAM RYAN & SONS; COEY & COMPANY; AND THE HONORABLE BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF IOWA.

Complaint filed February 27, 1889—Intervenors granted leave to intervene as parties defendant, March 21, 1889—Answers filed March 12–April 13, 1889—Heard at Chicago, Illinois, May 27, 1889, and at Kansas City, Missouri, May 31, 1889.—Case argued at Washington, D. C., October 26–29, 1889.—Briefs for complainant and intervenors filed October 26, 1889.—Proposed findings submitted by complainant November 4, 1889.—Reply brief from Des Moines Packing Company

and others, Intervenors, filed November 11, 1889.—Decision held to await hearing of case of John P. Squire & Co. *v.* Michigan Central R. R. Co. et al., No. 159, which took place June 3, 1890.—Decided October 16, 1890.

1. Certain propositions of fact established by the evidence in this proceeding may be briefly stated as showing the character of the case and also on account of the light they throw upon the conclusions reached by the Commission.

The city of Chicago is the largest pork-packing center in the country and is also the most extensive market for live hogs and all other live stock.

Kansas City, Leavenworth, St. Joseph, Atchison, Omaha, Council Bluffs, Sioux City, Sioux Falls, Des Moines, Dubuque, Burlington, Cedar Rapids, Marshalltown, Fort Dodge, Keokuk, Grinnell, Ottumwa, and many other points that might be named in the interior of Iowa, are extensive pork-packing centers, and the hog products packed at these cities are brought into direct competition with the hog products packed at Chicago, not only in the markets of the United States but also in all other markets of the world where hog products are consumed.

As articles of commerce the live hog and its product are in direct competition with each other at the points named and in the chief markets of this country.

From Sioux City to Mississippi river points, and from Sioux City to eastern markets and sea-board cities *via* Mississippi river points, the rates are made considerably higher by the carriers on live hogs than on packing-house products. With, however, the single exception of Sioux City, rates are made the same by rail carriers on live hogs and packing-house product carried from Missouri river points to Mississippi river points, or from Missouri river points to eastern markets and sea-board cities *via* Mississippi river points, or from intermediate points in the States of Iowa and Missouri to Mississippi river points, or from intermediate points in Iowa and Missouri to eastern markets and sea-board cities *via* Mississippi River points, or from Chicago to eastern markets and sea-board cities and intermediate points. But upon all shipments of live hogs and packing-house product from Missouri river points to the city of Chicago, or from intermediate points in the States of Iowa and Missouri to Chicago, the rate charged is much higher on live hogs than on packing-house products.

2. The foregoing propositions of fact being true, the defendants and intervenors undertook to justify the discrimination made against Chicago upon various grounds, which, with the view of the Commission upon each, may be briefly stated.

They claim that trains carrying live hogs had the right of way over other

freight trains and were running at a higher rate of speed on account of reaching the market at Chicago. But the evidence adduced did not show that this was of a nature and character that warranted the discrimination made in rates against Chicago. They also claim that there was much greater risk to the carrier in hauling live hogs than in transporting packing-house product, but the evidence showed that there was no appreciable difference in the risk of carrying the one as compared with the other.

They further claim that it is more expensive to the carrier to haul live hogs than packing-house products to Chicago. But the evidence did not sustain this ground of defence.

They claim, and the evidence showed it to be true, that the lines of railway east of the Mississippi river and east of Chicago used double-deck cars for transporting live hogs, while the railway lines west of Chicago and between Missouri river points and Mississippi river points and Chicago, with the exception of the Chicago, Milwaukee & St. Paul Railway Company and the Atchison, Topeka & Santa Fe Railway Company, used single-deck cars, and that the two exceptional roads last named had but few double-deck cars. But this was found to constitute no justification for this discrimination in rates against Chicago.

The claim that, counting coal, cooperage, salt and ice used in packing-house work, live hogs brought in and packing-house product carried out, the slaughtering of hogs at the packing-houses at Missouri river points and in the interior of Iowa and Missouri furnished the rail carriers more tonnage than if the live hogs were transported to Chicago and converted into packing-house product there. But this was not found to warrant the discrimination in rates made against Chicago.

By some it was insisted that as the rate on the live hogs from Missouri river points and from points in the interior of the State of Iowa, for example, to the packing-house at Sioux City, added to the rate on packing-house product from the packing-house at Sioux City to Chicago, is but a trifle more than the rate on the live hogs from the first point of shipment above named to Chicago, that this equalized the rates relatively on live hogs and hog product. But the Commission finds that there is no element of justice or fairness in making or computing rates upon any such basis as this, and that it constitutes no ground whatever for these discriminating rates against Chicago.

The intervenors insist that there is a considerable shrinkage of the live hogs in being transported in cars long distances, and further claim that the meat is in better condition when converted into product near where the hogs are reared and fresh than if this is done after the hogs are transported a long distance, and that therefore public considerations demand that the live hogs should be converted into prod-

uct near where they are grown. But the Commission finds that while there is a temporary shrinkage of from three to five per cent. in the weight of a hog from Missouri river points and interior points in the States of Iowa and Missouri in a haul to Chicago, yet that the transportation business of the country has demonstrated that live hogs may, as articles of commerce, be transported great distances without any material injury or loss in value, and that neither these considerations separately nor both combined upon the evidence adduced furnish any ground for these discriminating rates against Chicago.

The intervenors also defend these discriminating rates against Chicago on the ground of immense investments of capital that have been made in the establishment of packing-houses at Missouri river points and in the interior of Iowa and Missouri on the faith of these rates, which give employment to a large number of persons; that the business in these States has adjusted itself to this condition of affairs, and that now to make the changes in these rates claimed by petitioner would break up and ruin these packing-houses. But upon the evidence the Commission is unable to find that the preferential rates given to these large establishments in Iowa and Missouri and at Missouri river points as well as in other portions of the country are reasonable and just when compared with the heavy discriminations laid upon the packers and buyers of Chicago.

3. A business like that involving the preparation for consumption of such a large and leading staple and necessary of life as meat, with all the competition that exists for it in different and competing localities, brought near to each other by the fast rail lines of the country, is too large to be done in a corner, and is a conspicuous instance of a commodity that requires at the hands of carriers rates that are not only reasonable and just in themselves but relatively reasonable and just in their bearing upon these different localities.

Sidney Smith, *Jeremiah M. Wilson* and *James E. Munroe*, for complainant.

C. Beckwith, for C. & A. R. R. Co.

Wirt Dexter, for C. B. & Q. R. R. Co.

John T. Fish, for C., M. & St. P. Ry. Co.

Thomas F. Withrow, for C., R. I. & P. Ry. Co.

Lusk & Bunn, for C., St. P. & K. C. Ry. Co.

Norman Williams, for C., S. F. & C. Ry. Co.

E. T. Jeffery, for Ill. Central R. R. Co.

Isham, Lincoln & Beale, for McNulta, Receiver.

W. C. Goudy, for C. & N. W. Railway Co.

Gage, Ladd & Small, for Armour Packing Co. *et al.*, Intervenors.

Cummins & Wright, for Des Moines Packing Co. *et al.*, Intervenors.

REPORT AND OPINION OF THE COMMISSION.

BRAGG, *Commissioner:*

The petition of the Board of Trade of the City of Chicago, as amended, sets forth that the petitioner is a corporation, created by an Act of the General Assembly of the State of Illinois; that members of said Association, engaged in the slaughtering of hogs and packing of the product, possess very large facilities for the business at and in the vicinity of the city of Chicago; and charges that the defendant railway companies, being common carriers subject to the Act to regulate commerce, have been and are guilty of violating the provisions of said Act which forbid unjust discrimination and the giving of undue advantage to a particular locality or description of traffic, in this, that they demand and collect a much greater compensation for the service rendered for the transportation of live hogs from the cities of Kansas City and St. Joseph, Missouri; Leavenworth and Atchison, Kansas; Omaha, Nebraska; Council Bluffs and Sioux City, Iowa; or from some of said cities, and from points east thereof, to Chicago, than for a like and contemporaneous service rendered in the transportation of packing-house products.

In the petition is a schedule of rates in force January 1, 1889, and the rates fixed by said common carriers on the two commodities, live hogs and packing-house products, from the different packing stations on their respective lines to Chicago, showing that the excess of the rate on the former over that on the latter ranges from 5 cents per 100 pounds, at Kansas City, Leavenworth and other points named, to 11 cents at Fort Dodge, Iowa; but it is claimed that the fluctuations in the rates upon the packing-house product oftentimes increase these differences so as to make the rate on live hogs 100 per cent. greater than on the packing-house product.

The petition also charges that some of said carriers have

put in effect from Kansas City, Leavenworth and other southwestern Missouri river points to St. Louis and Mississippi river points a rate of 15 cents per 100 pounds upon live hogs, hogs in car-loads and packing-house products in car-loads, while denying to Chicago the benefit of like rates upon the two commodities.

The petition alleges that this practice of charging to Chicago higher rates upon the live hogs than upon the packing-house product gives an undue and unreasonable preference and advantage to the western port-packing industries located on the Missouri river and vicinity and at interior points, and to St. Louis and other points on the Mississippi river, and subjects the Chicago packers to an unreasonable disadvantage by reason thereof; that, for example, the Chicago packer who chooses to purchase hogs at either Kansas City or Omaha, (extensive live hog markets, having unusually great facilities for packing) must pay the same price for them that his competitor on the ground pays, while such competitor can slaughter the hogs and place the manufactured product in Chicago at a rate of freight from 7 to 7½ cents per 100 pounds less than the Chicago packer must pay to get the raw material to his packing-house. The result, it is claimed, has been to greatly reduce the packing business at Chicago and increase that of the western packers.

In contravention of this practice of charging higher rates to Chicago on the live hogs than on the hog product, the petitioner alleges:

1. That the value per 100 pounds of the live hog is about $4.50 to $4.75, while an equal weight of the product, hog round, is worth about $7.50.

2. That the loading and unloading of the live hogs costs the transportation companies comparatively nothing, this service being performed by and at the expense of the packer or owner.

3. That in addition to the expense of loading, unloading, etc., the owner of the live hogs is subjected to a yardage, commission and incidental charge at Chicago, amounting to about 8 cents per 100 pounds, an expense to which [illegible]

the western shippers of packing-house product are not subjected.

4. That from necessity and self-interest a train of stock cars, containing live hogs, is unloaded and ready to be returned within two hours after arrival at the Union Stock Yards, Chicago, while each and every car-load of packing-house product is allowed forty-eight hours for unloading.

5. That if the relative rates to Chicago on live hogs and packing-house product should be placed on a just basis, and the Chicago packer should thereby be enabled to hold his own as against his western competitor, the transportation companies would be enabled to receive a revenue upon the entire hog on shipments to Chicago, instead of only upon the condensed product, which entails a loss of 28 per cent., or a loss of 28 in every one hundred cars.

It is further alleged that the yield of the hog in product is about 72 per cent. of the live weight, and that this should be the basis of fixing freight rates upon live hogs and packing-house product—that is, the rate on live hogs, to be just and non-preferential to shippers, packers, or localities, should be about 72 per cent. of whatsoever rate is made upon packing-house product.

Accordingly the petitioner asks that the rates upon live hogs in car-loads be established at not over 72 per cent. of the rates charged upon shipments of pork product in car-loads, and when such reasonable relative rates have been fixed, established and published by such common carriers, that any change in the rate of transportation of either of said descriptions of traffic shall be accompanied by a corresponding change in the rates and charges upon the other commodity.

Answers are filed by the railroad companies defendant, respectively, and also by the Des Moines Packing Company and others, packers at Des Moines and other points in the State of Iowa, and by the Armour Packing Company and others, packers at Kansas City, in the State of Missouri, said packers appearing and answering as intervenors.

The respondent carriers admit that the schedule in the petition of the rates on live hogs and packing-house product, respectively, showing higher rates on the former than on the

latter, is substantially correct, but allege that this difference, under the conditions affecting the transportation of said articles, is and has been necessary, reasonable and just; that said carriers, in fixing said rates, are not and have not been guilty of unjust discrimination or of giving undue advantage to any particular locality or description of traffic, as alleged in the petition, but the difference in rates upon the two commodities is fully warranted, because:

1. The transportation of live hogs is attended with greater cost than that attending the transportation of the product, in this, that in the former case extra care and attention are required, and continuous and rapid transit are necessary, and there must be carriage free to and from the points of shipment of a number of persons accompanying the live hogs.

2. The transportation of live hogs is attended with greater risks than that attending the transportation of the dead product—risk of damage both to the hogs and persons accompanying them, and of damage from delays in transit preventing the delivery of the hogs in time for that particular market.

3. The weight of the hog product which may be transported in a car of given dimensions is largely in excess of that of the live hogs which may be transported in said car, and consequently the proportion of the dead weight to be carried is much greater in the case of a haul of live hogs than of the product.

The respondent carriers deny that the loading and unloading of the live hogs costs the transportation companies nothing, and aver that for the unloading of cars of live hogs a sum per car is paid by them to the Union Stock Yards Company at Chicago, and that for loading cars with live hogs at Kansas City, Mo., a sum per car is paid by the carriers to the Stock Yards Company at that point.

The carriers also aver that while it is true that cars of live hogs are from necessity unloaded more speedily than cars of product, yet the time required to prepare stock cars for use after being so unloaded, necessitates a longer detention from service than occurs in the case of cars of product.

The carriers further aver that if it be true, as alleged by the petition, that the shippers of live hogs are subjected to yardage, commission and incidental charges at Chicago amounting to about 8 cents per hundred pounds, the remedy for this grievance is rather a reform in the stock yards at Chicago than a change in railroad rates.

The carriers admit that there is loss in weight in rendering live hogs into product (estimated by some of the respondent carriers at 28 per cent. as alleged by petitioner, and by others at not so much); but it is denied that any loss of tonnage would result to the transportation companies west of Chicago from any decrease in shipment of hogs to that point. On the contrary it is averred that the tonnage of said companies is greatly increased by the establishment of packing houses where they are now in operation west of Chicago; that said packers ship over the lines of said companies supplies, such as coal, salt, cooperage, etc., for curing and packing meats, and employ at western points large numbers of men who contribute to the importance of western towns as commercial centers, and consequently to the business of the carriers thereby.

The carriers further deny that the difference in rates to Chicago on the live hog and hog products subjects Chicago packers to any material disadvantage, because it is claimed nearly all hogs slaughtered at interior points have previously paid to the carriers certain amounts of freight from the point of original shipment to such interior point, and the sum of the rate on live hogs from the point of original shipment to the interior packing point plus the rate on the product from the packing point to Chicago is not in most cases greatly, if at all, less than the rates on live hogs from the original shipping point to Chicago.

In the answers of the Chicago & Alton Railroad Company, the Chicago, Milwaukee & St. Paul Railway Company, and the Chicago, St. Paul & Kansas City Railway Company, it is further alleged that the rate for the transportation of packing-house product from Kansas City and from Missouri river points besides Kansas City is largely influenced by lines operating south and south-east of Kansas City which trans-

port eastwardly few, if any, live hogs, but large quantities of the hog product, making thereon low rates in order to compete in that section of the country which is largely furnished by Cincinnati and Louisville.

The joint answer of the Armour Packing Company and others, intervenors, admits that some of the defendant railway carriers have put into effect from Kansas City to St. Louis a rate of 15 cents per 100 pounds upon both live hogs and packing-house product, but deny that this results to the advantage of the packers located on the Missouri river and vicinity and at St. Louis and other points on the Mississippi river, or to the disadvantage of Chicago packers, because, they say, the number of live hogs shipped from Kansas City and other Missouri river points to St. Louis and other Mississippi river points is so small as to be "unworthy of consideration," and that said carriers carry on the business of transportation between Missouri river and Mississippi river points in competition with other carriers not parties to this proceeding and not governed by the provisions of the Interstate Commerce Law.

It is also admitted by the intervenors, the Armour Packing Company and others, and the Des Moines Packing Company and others, that the business of pork packing has largely decreased in Chicago, and has grown to large proportions in Kansas City and other cities west of Chicago, but they claim that this has not been occasioned by unjust discrimination in railroad rates or by undue preference afforded to the western packers, but is rather the result of the natural and inevitable laws of trade, which in prior years gave to Chicago the business of Cincinnati—the manufactories moving to the raw material.

The Des Moines Packing Company and others allege that the practice of making higher rates upon live hogs than upon the product has been continued for twenty years or more, and under it they had expended large sums of money in the construction and acquisition of property fit and suitable for their business of packing; that all kinds of trade in the territory governed by the complaint have been organized and developed upon the basis of the continuance of said rates,

and to now change them, as prayed for by the petitioner, would not only destroy the capital immediately invested in packing-house property, but would disorganize and seriously affect many other industries incidentally connected with the packing business.

Substantially the same allegation is made by the Armour Packing Company and others.

After filing their answers the carriers took no further part in the controversy, seeming to feel reluctant to become active in the controversy between those who were their patrons on a large scale, and leaving the matters involved to the judgment of the Commission, but the intervenors were represented by counsel throughout and presented their views as well as the defenses set up by the carriers, both by the evidence as well as in argument.

The evidence adduced on the hearing of this complaint in behalf of the petitioner and the carriers and of the intervenors is very voluminous. Great latitude was allowed in this respect, not only on account of the importance of the questions involved and of the large interests affected, but also because the Commission desired the benefit of everything in the shape of evidence that would throw light upon the merits of the controversy. As usual, where this is done, the Commission finds in considering all this evidence and summing up its conclusions with reference to the issues in controversy that a great deal of this evidence, while interesting in itself and relating to topics that are of very great interest, has but very little, if any, bearing upon the case which the Commission is obliged to decide. The Commission now makes this statement at the outset of the facts found because it has been deemed unnecessary to incorporate into the findings of fact a large mass of details, of great interest in themselves, but having no bearing as legal evidence upon the merits of this controversy. It has been the practice of the Commission since its organization to only incorporate into its findings of facts such facts as are deemed material to the conclusions reached by the Commission on the question in controversy, and that course will be pursued in this case.

The defendant railroads are common carriers of freight

between the cities of Kansas City and St. Joseph, Mo., Leavenworth and Atchison, Kan., Council Bluffs and Sioux City, Ia., Omaha, Neb., and intermediate points, and the city of Chicago, Ill., and as such are engaged in interstate commerce, and are subject to the Act to regulate commerce.

The rates upon live hogs in car-loads and packing-house products in car-loads, charged by said railroads Jan. 1, 1889, and at the time of the filing of the petition herein, between the points named in the table next below, are as follows:

IN CENTS PER 100 POUNDS.

To Chicago from	Live hogs.	Packing-House Products.	Difference.
Kansas City, Mo.	25	20	5
Leavenworth, Kan.	25	20	5
Atchison, Kan.	25	20	5
St. Joseph, Mo	25	20	5
Omaha, Neb	27½	20	7½
Council Bluffs, Ia.	27½	20	7½
Sioux City, Ia	35	20	15
Sioux Falls, S. Dak	35	20	15
Cedar Rapids, Ia	25	15	10
Burlington, Ia	19	13	6
Oskaloosa, Ia	25	16	9
Keokuk, Ia	19	14	5
Dubuque, Ia	20	12½	7½
Galena, Ill	17½	12½	5
Fort Dodge, Ia	30	19	11
Marshalltown, Ia	25	16	9
Grinnell, Ia	25	16	9
Des Moines, Ia	25	18	7

The distance from Chicago to each of the points named in the above table, by the shortest line, is as follows:

Chicago to—	Miles.
Kansas City by Santa Fe line	458
Leavenworth, by the Rock Island	520
Atchison, by the "Q"	490

Chicago to—	Miles.
St. Joseph, by the "Q"	469
Omaha, by the C., M. & St. P.	490
Council Bluffs, by the C., M. & St. P.	487
Sioux City, by the Illinois Central	510
Sioux Falls, S. Dak., by the Illinois Central	546
Cedar Rapids, Ia., by the North-western	219
Burlington, Ia. by the "Q"	206
Oskaloosa, by the Rock Island	302
Keokuk, by the "Q"	249
Dubuque, by the C., St. P. & K. C.	172¼
Galena, Ill., by the Illinois Central	165
Fort Dodge, Ia., by the Illinois Central	375
Marshalltown, Ia., by the North-western	289
Grinnell, Ia., by the Rock Island	303
Des Moines, by the Rock Island	358

But there are also other rival and competing lines reaching each of these points from Chicago by which the distance is only a trifle greater than by the shortest line, and therefore the rates made by the rival and competing lines from each of these points, respectively, to Chicago are the same on live hogs and packing-house products as set forth in the table of rates above stated (with the exception of dressed hogs, that is, hogs killed and dressed but not cut into parts, or products of the hog, whether green, partially cured or fully cured), and are carried by the defendant railroads from the points above mentioned to Chicago for the rates above specified for packing-house products and are treated by said railroads for purposes of transportation as packing-house products, with the difference as stated in the table in rates between live hogs and packing-house products.

The rates upon the two commodities in question, namely, live hogs and packing-house products in car-loads, charged by said railroads from Kansas City, St. Joseph, Atchison, Leavenworth, Council Bluffs, Omaha, South Omaha and Sioux City to Mississippi river points, and the rates upon said commodities in car-loads charged by said railroads and connecting lines from the Missouri river points above men-

tioned, to the city of New York and other eastern seaboard points, are as shown in the following table:

RATES ON LIVE HOGS AND PACKING-HOUSE PRODUCTS IN CAR-LOADS
RATES GIVEN IN CENTS PER 100 POUNDS.

From	To Mississippi River Points.		To N. Y. and Eastern Seaboard P'ts.	
	Live Hogs.	Pkg. House Products.	Live Hogs.	Pkg. House Products.
Kansas City, St. Joseph, Atchison and Leavenworth..	15	15	50	50
Council Bluffs, Omaha, and South Omaha.....	15	15	50	50
Sioux City.....	20	15	55	50

From Chicago to New York and eastern seaboard points and to intermediate points to which shipments of live hogs and products are made, the rates are the same upon each.

The city of Chicago is a very extensive live-hog market and pork-packing center. The number of live hogs received at Chicago in the years below mentioned are as stated in Table No. 1, hereinafter given, and the number of live hogs killed and packed in Chicago for the same years are as shown in Table No. 2, below given.

TABLE NUMBER ONE.

Receipts of live hogs, Chicago, during the years below mentioned. (See Stock-Yards Report, 1888).

1878	6,339,654
1879	6,448,330
1880	7,059,355
1881	6,474,844
1882	5,817,504
1883	5,640,625
1884	5,351,967
1885	6,937,535
1886	6,718,761
1887	5,470,852
1888	4,921,712

TABLE NUMBER TWO.

Hogs packed at Chicago during years below mentioned. (See Chicago Board of Trade Reports, 1888, p. 73.)

1878	4,009,311
1879	4,960,956
1880	4,680,637
1881	5,752,194
1882	5,100,484
1883	4,222,780
1884	3.911,792
1885	4,228,205
1886	4,928,730
1887	3,851,189
1888	4,113,255

Kansas City, Sioux City, Cedar Rapids, Omaha, Leavenworth, Atchison, St. Joseph, Council Bluffs, Sioux Falls, Burlington, Des Moines, Keokuk, Dubuque, Galena, Fort Dodge, Marshalltown, Grinnell and other points that might be named in the interior of Iowa, are extensive pork-packing centers, and the hog products packed at those places are brought into direct competition with the hog products packed at Chicago, not only in the markets of the United States, but also in all other markets of the world where hog products are consumed. Large investments have been made at each of these cities in packing-house industries, and they employ a great many men in their work and have a large tonnage in the shape of supplies shipped to them in coal, salt, cooperage and other articles used in the packing and curing of meat. A large portion of the country adjacent to each of these cities furnishes these packers with live hogs, in some instances for distances of from 50 to 100 miles, and in other instances for less distances. Formerly more of these live hogs went to Chicago than now. At one time Cincinnati was the chief and most extensive pork-packing center in the country, afterwards Chicago, and while Chicago is still the most extensive pork-packing center, yet its business has largely fallen off in this respect and has been taken up by the pork packers at the points above named farther west.

The live hogs shipped to Chicago from points west, whether killed there or re-shipped elsewhere, are unloaded at the Union Stock Yards Company's yards at Chicago, and the hog product shipped over the lines of railroad owning said stock yards is carried to the packing houses or storage houses in the vicinity of the stock yards and there unloaded.

Live hogs are for the greater part transported by the defendant railroads from points west of Chicago to Chicago in single-deck common stock cars; but two of said railroads, the Chicago, Milwaukee & St. Paul Railway Company and the Atchison, Topeka & Santa Fe Railroad Company, employ for this traffic double-decked cars, and the use of such cars by the two railroads last mentioned has but recently commenced and is not largely practiced. Facilities for loading and unloading double-deck cars exist at Chicago, Kansas City and all other important hog-shipping points west of Chicago, but at hog-shipping points of less importance, which embrace a very large area of the territory upon the lines of the different carriers, these facilities for loading and unloading double-deck cars do not exist.

The upper deck of a double-deck car weighs about 100 pounds. Two men can put it in or take it out in about 15 minutes. The cost of loading and unloading a double-deck car is the same as in the case of a single-deck car. When the cars are returned unloaded the upper deck is not taken out, but if it is returned loaded the upper deck is taken out. About twenty upper decks can be brought back on one car.

The upper deck used will ordinarily fit any stock car, as these stock cars are generally of uniform dimensions.

The average weight of the single-deck stock cars, without the bedding carried in them or without the manure found in them at the end of the journey when carrying live hogs, is about 21,600 pounds. The cars carrying live hogs are usually bedded with straw, but sometimes sand, saw-dust or coal dust is used for bedding. The average weight of the bedding and manure of the live-hog cars at the end of the trip, loaded, is about 2,500 pounds.

The loaded live-hog cars are weighed at Chicago, and after being unloaded the empty cars are weighed and the weight

of the empty car is taken from the weight of the loaded car. From this is deducted five hundred pounds per car by the carrier to cover removed portions of bedding and manure and the shrinkage in weight from the weight of the loaded car, as first loaded, above the weight of the empty car, and freight is charged only upon the difference remaining. The average weight of the single-deck live-hog cars and of the bedding and manure is about 24,100 pounds. This is the total of the dead weight or non-paying weight carried by the transportation companies in the traffic in live hogs.

The average weight of the double-deck live-hog cars is about 1,000 pounds more than that of the single-deck cars, or about 22,600 pounds.

The weight of the bedding and manure in the double-deck cars is not shown by the evidence, but assuming it at as much greater than the weight of the bedding and manure in a single-deck car as the load carried in a double-deck car is greater than the load carried in a single-deck car, which would seem to be about fair, the weight of the bedding and manure in a double-deck car would be about 3,940 pounds. According to this estimate the dead weight of the double-deck car would be about 26,540 pounds, or about 9,460 pounds less than the dead weight of the refrigerator car and about 880 pounds more than the dead weight of a common box car.

The hog product is carried from western points to Chicago in refrigerator cars, in common box cars and in tank cars, the latter being used for lard transportation only.

From the evidence before us it appears that about 73 per cent. of the total hog product carried to Chicago by the defendant railroads is transported in refrigerator cars. The remainder of this is carried in box cars and in tank cars.

The average weight of the refrigerator car engaged in this traffic, empty, is about 31,600 pounds. In each car of this kind about 1,000 pounds of salt, used as a preservative, and 3,400 pounds of ice, are carried by the defendant railroads free of charge to the shippers for the purpose of carrying the product safe. According to this estimate the total dead

weight carried in the transportation of a refrigerator car is about 36,000 pounds.

The average weight of a common box car in which hog products is carried is about 25,060 pounds, which is the dead weight carried in the hog-product traffic when transported in a car of this description.

In carrying a single-deck load of live hogs the railroads haul 11,900 pounds less of non-paying weight in each car they haul than in transporting a load of hog products in a refrigerator car, and 1,560 pounds less of non-paying weight than they haul in transporting a load of hog product in a common box car.

The average weight of a single-deck car of live hogs on the defendant railroads is about 16,503 pounds, usually estimated by the carriers in round figures at 17,000 pounds, and the weight of a car-load of product carried in either a refrigerator or box car is about 24,000 pounds.

The average weight of a double-deck car of live hogs is about 26,000 pounds.

Twenty-five to thirty car-loads of live hogs make an average train load.

For example, taking the point of Fort Dodge, Ia., to Chicago for illustration in the comparison of the rates in the matter of distance and of carriage, a railroad hauling a single-deck car-load of live hogs weighing 16,503 pounds from Fort Dodge to Chicago will haul a total weight, including the bedding and manure, of 40,603 pounds, and will receive as freight for that service $49.50, or at the rate of 12.19 cents for every 100 pounds of weight carried. On the other hand, a railroad hauling a refrigerator car-load of hog product of the weight of 24,000 pounds from Fort Dodge to Chicago will haul a total weight, including the car, ice and salt, of 60,000 pounds, and will receive for this service the sum of $45.60, or at the rate of 7.6 cents for every 100 pounds of weight carried. A corresponding difference in these rates will be found from other points in Iowa, Nebraska, Kansas and Missouri, from which hogs and hog products are shipped to Chicago.

An illustration of the difference in these rates on a large scale is seen in the case of Sioux City. During the year

1888, 442,529 hogs were slaughtered at Sioux City, producing 115,034,919 pounds of packing-house product. Now the revenue on 115,034,919 pounds of packing-house product, from Sioux City to Chicago, at 40 cents per 100 pounds, that being the prevailing rate, would be to the carrier $460,139.60. The revenue on 442,529 hogs carried from Sioux City to Chicago, estimating 64 hogs to the car, that being the average number carried in a car-load into Sioux City in 1888, and estimating the weight at 17,000 pounds per car, that being the weight charged for, and at a rate of 50 cents per 100 pounds, that being the prevailing rate charged by the carriers on shipments of hogs from Sioux City to Chicago, would be $587,090. The revenue on 442,529 hogs carried into Sioux City, if all there slaughtered were transported over the Dubuque & Sioux City Railroad from the same points and at the same rate as actual shipments were made over the line of the Illinois Central Railroad would be $131,777. This last item added to $460,139.60, being the revenue on the packing-house product from Sioux City to Chicago at 40 cents per 100 pounds, would make a total of $591,916.60.

A single-deck stock car costs on the average $475, and the average cost of a refrigerator car is $840, while some of the latter cost as much as $1,200.

The bedding used in the stock cars is paid for by the shipper, and the ice and salt used in the refrigerator cars are also paid for by the shipper.

The shipper of live hogs and hog products each loads his freight into the car, and the shipper of the product unloads the product.

The carriers of the live hogs pay the Stock Yards Company at Chicago 25 cents per car for unloading live hogs, and the carriers are at no other expense, such as yardage, switching or otherwise, at Chicago. The carriers pay the Stock Yards Company of Chicago a track service charge of $1.07 for each car-load of the hog product. It does not appear that this charge applies to cars carrying live hogs.

The carriers also employ an inspector at their own expense to check off the product as it is loaded into the cars, and it

seems that this expense is peculiar to the transportation of the hog product.

The refrigerator cars are inspected and re-iced once by the railroad carriers from Missouri river points to Chicago, the shipper pays for the ice, but the expense of the labor of inspection and re-icing is borne by the carriers.

The loaded live-hog cars in trips of five hundred miles or over are stopped once to feed the hogs, and the feed is paid for by the shipper.

The expense to the carriers on the basis of hands employed in the matter of trainmen is the same in transporting a train of live hogs and a train of hog products.

The time of loading a car of live hogs is short, being only a few minutes, while the time of loading a car of product is usually one hour and a half or more.

The live-hog cars are unloaded usually within two hours after the arrival at Chicago, while the car-loads of the product are by the rules of the carriers allowed forty-eight hours to unload, though usually they are unloaded in less than that time.

The live-hog cars are cleaned by the carriers at their own expense. They require one cleaning for about every one thousand miles of travel loaded. The cost of cleaning them is about 30 cents a car. If the live-hog cars carry return loads westward they must be cleaned before being thus used.

The refrigerator cars also require cleaning and must be cleaned before loading with return loads. The carriers pay the cost of cleaning them. Refrigerator cars are seldom returned loaded, unless at the request of the owner of the refrigerator car. If returned loaded in bulk or boxes, the car must be steamed out and washed with a hose and allowed to dry before it can be used for most classes of freight. The expense of cleaning a refrigerator car is not shown by the evidence, but it cannot be very considerable.

We find that the difference in expense between cleaning a live-stock car and a refrigerator car for a return load is not an item of any material consequence.

Live-hog cars, as well as refrigerator cars, are usually returned empty.

Evidence was introduced to the effect that the defendant railroads maintain at their own expense the Western Railway Weighing and Inspection Bureau, which weighs all freight entering Chicago from the west, except hog-product cars loaded or unloaded. The product cars loaded and empty are weighed by the shippers. The association in question pays traveling auditors who investigate the weighing of the product cars by the shippers from western points to Chicago, and it also keeps the same book accounts of the product car-loads that it does of other freight. But the expense of this association was not put in such shape by the evidence before us as to show the expense per car of weighing and inspecting live hogs and hog product respectively. On the other hand, the defendant railroads maintain at their own expense the Chicago Service Association, the object of which is to enforce the prompt loading and unloading of all freight cars except live-stock cars. What the expense of this association amounts to per car of hog-product is not shown by the evidence, but none of these expenses are chargeable to the live-hog traffic.

Some of the defendant carriers haul live hog trains at greater speed than first-class freight, but the Chicago, Burlington & Quincy and the Chicago & Northwestern Railroads, two of the largest carriers, carry live-hog cars no faster than the product cars, and often carry live-hog cars and product cars in the same train; and these roads carry a very large portion indeed of the live hogs from western points to Chicago. The greater speed with which some of the defendant carriers haul the live-hog cars does not appear to be a necessary and essential element or factor in the live-hog traffic from the western points to Chicago such as affects to any appreciable extent the rates.

The relative risk and liability of damage to the carriers are not appreciably greater in the transportation of the live hog than in the transportation of the hog-product, according to the evidence in this proceeding.

The defendant carriers pass men in charge of live-hog cars free, according to the following rule:

"Pass one man one way in charge of one car of horses, mules, or cattle; pass one man each way in charge of two or more cars of horses, mules, hogs, or sheep; pass two men each way in charge of four cars or more; pass three men each way in charge of six cars or more—three to be the maximum number to be passed with any shipment."

The men who are thus passed free with the live-hog cars care for the hogs on the way, and when they are returned free they travel in first-class passenger cars.

The refrigerator and tank cars are owned more largely by the packers than by the carriers. The Chicago, Burlington & Quincy and the Chicago & Northwestern each owns only about one-third of the refrigerator cars used by them.

The carriers pay the private owners of refrigerator cars for their use one cent per mile each way, loaded or empty, and they pay three-fourths of a cent each way, loaded or empty, for the use of the tank cars.

The cured product, the hog round, is worth about 57 per cent. more per 100 pounds than the live hogs from which it is made.

The yield of the hog in product and offal varies considerably according to the size and condition of the hogs and of the season when they are slaughtered. In the case of a small hog weighing 191 pounds this percentage is much smaller than in the case of a large hog weighing 286 pounds. It is also larger in the case of a hog that is very fat than in the case of a hog that is lean. On the evidence in this proceeding the average yield of the hog in product and offal would seem to be about 76 per cent. of the gross weight of the live hog.

The product and offal together constitute all parts of the live hog that are valuable and preserved and sold as articles of commerce.

About 25 per cent. of the hog-product transported by the carriers from points west of Chicago is carried in bulk in refrigerator cars. The remaining 75 per cent. is transported in boxes, barrels, tierces and other packages.

Ice, which is largely used by all pork packers, costs at

Chicago $1.70 a ton. At Kansas City it costs $2.50 a ton. At the Iowa packing points it costs from 30 to 45 cents a ton.

Salt is extensively used by pork packers. At Kansas City it costs about one dollar more than at Chicago, and substantially the same at Iowa packing points as at Chicago. The evidence does not show distinctly what it does cost at Omaha.

The cost of loading and icing a car-load of product at Kansas City is about $4.50 per car, and at the other western packing points the cost of loading and icing is about $3.50 per car. The charges at the Union Stock Yards at Chicago, to the owners of live hogs shipped and unloaded there, for yardage, feed, inspection and commission amount to something over 8 cents per hundred pounds. No charges of this character are shown to be paid by the owners of live hogs shipped to the packing points west of Chicago.

In selecting the points named for the purpose of comparison according to distance and carriage of the relative rates of hog-product and live hogs from Fort Dodge to Chicago, it must not be assumed that the evidence shows that purchases of live hogs are made in large quantities by Chicago packers at Fort Dodge. This point was selected for the purpose of comparison according to distance and mileage of the relative rates charged upon these respective commodities. For this purpose it serves as well as to have taken some point of less importance in the State of Iowa where Chicago packers do purchase in large quantities, because the question is one of charge according to distance and mileage upon the rate shown by the evidence in this proceeding. The same principle applies to all other points from which hogs and hog-products are shipped under these rates to Chicago from points generally in Iowa, Kansas, Nebraska and Missouri. The evidence tends strongly to show that the purchases of hogs for the Chicago market and the packing houses at Chicago are not made to any large extent at points like Kansas City, Omaha, Sioux City, Des Moines and other places where these packing houses exist, but are made at other points along the line of the defendant carriers in the States of Iowa, Kansas, Nebraska, and Missouri, which are not

immediately tributary to the packing-houses located in these States.

As a matter of actual practice, refrigerator cars being so heavy, on account of the weight only a few of them are hauled in a train. The balance of a train is ordinarily made up of grain cars and other freight or merchandise. It is usual that live-hog cars make up a train of themselves, though sometimes there may be a car of this description hauled in a train with other cars.

The city of Chicago, in addition to being a large pork-packing centre, is also a great market for live hogs and all other live stock—the largest market in the country. A very large amount of the live hogs carried to Chicago from the west are not slaughtered and packed at Chicago, but are purchased in the yards at Chicago by the agents of eastern packers, and are carried east for the packing houses and markets.

The difference each year between the receipt of the live hogs at Chicago and the hogs slaughtered and packed at Chicago, from and including 1878 to and including 1888, will be seen in the table giving these figures in a preceding part of this report.

It appears from the evidence that the pork-packing of Kansas City grew from 73,500 hogs in 1874–5 to 1,637,411 hogs in 1887–8; that the packing of Omaha advanced from 7,500 hogs in 1872–3 to 971,986 hogs in 1887–8; that the packing of Ottumwa, Iowa, increased from 25,000 hogs in 1872–3 to 169,948 hogs in 1887–8; that the packing of Marshalltown, Iowa, from 1,461 in 1881–2 increased to 61,205 in 1887–8; that the packing at Dubuque was 30,000 hogs in 1872–3 and 145,000 hogs in 1887–8; that the packing of Cedar Rapids was 77,391 hogs in 1872–3 and 402,793 hogs in 1886–7; and the packing in Sioux City was 5,800 hogs in 1872–3 and 856,490 hogs in 1887–8. At various other important points, such as Des Moines, Ia., and others that might be named, there was a large and corresponding increase during the period mentioned. The pork packing of Chicago increased from 1,225,236 hogs in 1872–3 to 5,752,191 hogs in the year 1881–2. From the latter year to 1884 it decreased to 3,911,792 hogs, while in 1885 it embraced 4,228,205 hogs; in 1886 it was

4,928,730 hogs; in 1887 it was 3,951,189; and in 1888 it was 4,113,255 hogs.

After live hogs have reached Chicago, if shipped from there to New York and other eastern points, they are as a rule carried in double-deck cars, and this method of transportation seems to prevail generally from Mississippi river points to eastern points.

The evidence shows that there is usually a slight shrinkage in the weight of the live hog when transported from western points to Chicago of from 3 to 5 per cent., but how permanent this is or how long it lasts, or to what extent it is subsequently remedied, if at all, by feeding and rest of the hog is not shown by the evidence. But the evidence shows that the live hog is an animal which may be transported great distances without any material injury to the hog or to its weight or to its product.

The course of business on a large scale from western to eastern points and packing houses may be said to have fairly and reasonably demonstrated this result.

The subject of relative rates on packing-house product and live hogs has heretofore been matter of serious consideration by the Western Freight Association. With the exception of the Chicago & Alton Railroad Company and the Chicago, Santa Fe & California Railway Company, the defendant railroad companies in this proceeding are now members of the Western Freight Association. At a meeting of the Western Freight Association held at Chicago, November 13–15, 1888, the following resolution was adopted by the Association:

"*Resolved*, That on and after January 1, 1889, the rate on packing-house product from Missouri river points, including Sioux City, be not less per one hundred pounds than the rate on live hogs, and that this same relation obtain in the territory south of the line of the Chicago & Northwestern Railway, Clinton to Council Bluffs."

All the defendant railroads were represented at that meeting. This resolution was never put in effect, and on December 20, 1888, was rescinded. It appears that the grounds

upon which it was rescinded were, as testified by the traffic manager of the Chicago, Rock Island & Pacific Railway, and in this his testimony was not contradicted, to use the substance of his own language, that the Chicago & Alton Railroad Company said at the meeting of the Western Freight Association when the rescission of the resolution was adopted, that the rates on live hogs were fixed by the statutes of the State of Missouri, and that competition of lines outside of the Association *via* Memphis to the seaboard fixed the rate on product. The Chicago & Alton Railroad Company desired to put the rate on the product so low as to beat the competition for the business, and no other road wanted to lower the live-stock rate below the statute rate in Missouri. The rates therefore remained as they now are, and the above resolution of November 13–15, 1888, was rescinded.

It appears from the evidence that hog product is shipped from Kansas City most largely to points south and west. But the evidence does not show that it is shipped in large quantities south or west from Kansas City to seaboard points. This product finds one of its large consumers in the Southern States.

According to the evidence and facts found in this proceeding, upon which it now becomes the duty of the Commission to state its conclusions and opinion under the Statute, it appears that the rates of the defendant carriers, with one exception which will be hereinafter stated, are the same on live hogs and hog-products from Missouri river points to Mississippi river points, and are the same when carried from Missouri river points, with one exception, *via* Mississippi river points to eastern markets and seaboard cities. This is true also of the rates from interior points in the States of Iowa and Missouri. The exception referred to is that of Sioux City. By the rail lines east from Chicago to intermediate points, eastern markets and seaboard cities, the rates are the same on live hogs and packing-house product. By the rail lines from Mississippi river points to eastern markets and seaboard cities the rates are the same on these articles. From Missouri river points to the south-east the rates made by carriers who are not parties to this proceeding are the

same on live hogs and packing-house products. On all shipments, however, of live hogs and packing-house product from Missouri river points to the City of Chicago, or from intermediate points in the States of Iowa and Missouri to Chicago, the rate charged is much higher on live hogs than on packing-house product, being the rates set out in the table shown in the facts found, with the differences there stated, in a preceding part of this report, and which it is unnecessary here to repeat.

Various causes are assigned by the defendant carriers and intervenors as justifying these differences in rates between the points named and Chicago upon these articles. These will be considered separately. One of these is that trains carrying live hogs have the right of way over other freight trains and are run at a higher rate of speed on account of reaching the market at Chicago. But the evidence does not show that there is any considerable difference in the rate of speed of the live-hog trains and the trains carrying packing-house product; on some of the roads it was about three miles per hour, while on two of the other leading lines there was no material difference. It does not appear that either buyers or shippers have ever been benefited or injured in the market by this slight difference in the speed of the trains. Nor does it appear that any of the carriers have incurred any liability, or that there has ever been any attempt to hold any of them to any supposed liability on account of not running trains to Chicago loaded with live hogs faster than other trains loaded with packing-house product, or other freight for the markets at that city.

Another defense set up for this difference in rates is that it is claimed there is a much greater risk to the carrier in hauling live hogs than in transporting packing-house product. It appears, however, from the evidence that there is no appreciable difference in the risk of carrying the one as compared with the other. This result of the evidence was so plain that one of the very able counsel for some of the intervenors admitted in the closing argument before the Commission in this case that he had been surprised at it, and candidly and practically abandoned this ground of defense.

A further ground of justification for it is claimed to be that more of weight in the way of packing-house product can be hauled in a refrigerator car than of live hogs in a stock car, and that there is less expense of handling and hauling it than in the case of live hogs, and that it really pays the carrier more at the lower rate than the live hogs at the higher rate. But upon the evidence it was very clear that, when the dead weight of the car hauled in each instance was taken into consideration, and the expense of hauling and handling the two different articles of freight, the carrier received considerably more of revenue on an article of far less weight and value in the shape of a car of live hogs than upon a carload of packing-house product, an article of much greater weight and value—and that the expense of handling and hauling did not warrant the difference made. The general rule in classifying articles for freight rates by carriers is that the manufactured article, when of considerably more value, takes a higher rate than the raw material out of which it is made; and while there may be, and are, a few exceptions to this rule, arising from peculiar circumstances and conditions, yet upon all the evidence they are not found to exist in this proceeding upon all the facts of the case.

A feature of the live-hog transportation service is that of passing one man each way in charge of two cars or more of hogs, and two men each way in charge of four cars of hogs or more, and three men each way in charge of six cars or more of hogs—three men to be the maximum number to be passed on any shipment. The business of these men on these trains is to look after and care for the hogs in transit, and after reaching Chicago they are returned without charge by the carrier on first-class passenger cars to their homes as part of the transaction. It is urged that this, taken in connection with the other expense incurred by the carriers, showed that the transportation of live hogs was much more expensive and attended with greater risk, and therefore ought to bear a higher rate. But no charge is made by the carriers for the service rendered by their servants in re-icing the product *en route* to destination, and 3,000 pounds of ice and 1,000 pounds of salt are carried free in each product car.

It seems to be a service that is incident to the transportation and a part of it in each instance, rendered without any appreciable expense or extra risk to the carrier. It is the business of the carrier to have the live hogs and product looked after and carried in a safe condition while *en route* from point of shipment to destination. The shipper of live hogs furnishes men to travel with the hogs and aid the carrier in feeding them and carrying them safely; and after arriving at destination the carrier, having the vacant space in its passenger cars which are going through anyhow to the homes of the men, carries them back without charge, and, as is apparent, without any appreciable expense, as part of the transaction of the shipment of live hogs. In this there is nothing that involves any extra outlay to the carrier or calls for any comment. A carrier in this way finds it to its interest to afford accommodation for the transportation of that kind of freight which involves no element of unjust discrimination or unlawful preference, but extends alike to all shippers of that freight and is an incident of the service. So it is that rail carriers in transporting milk to New York City in cans and other vessels return the empty cans and vessels to the shippers without charge. And so it is that carriers return empty grain sacks without charge to the farmers in Oregon, Washington, North Dakota and South Dakota. The evidence shows in this case that the same rule extended to live hogs applies to shipments of horses, cattle and sheep.

As to the risk of transporting men on trains with live hogs, not an instance was shown by the evidence where a carrier was ever held to any liability on account of injury to any of these in course of transportation, or that any attempt of the kind was ever made.

An excuse intimated rather than expressed by some of the carriers was that on their lines west of Chicago and between Missouri river points and Mississippi river points and Chicago none of them used any other than single-deck cars in the transportation of live hogs except the Chicago, Milwaukee & St. Paul Railway Company and the Atchison, Topeka & Santa Fe Railroad Company, and that they have but few double-deck cars and had only recently commenced using

them; while the lines east of the Mississippi river and east of Chicago, as a rule, use double-deck cars entirely in the transportation of hogs. It appeared, however, that this did not make any difference in the rates on live hogs and packing-house products from Missouri river points to Mississippi river points, nor from Missouri river points to eastern markets and the seaboard. A fact of this kind cannot avail the defendant carriers in making rates on these two competing commodities the same on shipments to all other points on their lines, except Chicago. This is not a circumstance and condition that will justify any such discrimination as this against packers and buyers at Chicago. As was said by this Commission in the case of the Business Men's Association of the State of Minnesota *v.* The Chicago, St. Paul, Minneapolis & Omaha Railway Company, 2 I. C. C. Rep. 65, "The words 'substantially similar circumstances and conditions' as found in the second and fourth sections of the Act to regulate commerce, as we understand and construe them, in certain important particulars define the duties and rights of carriers and the rights of shippers as well. If the carrier claims to act under a compulsion of circumstances and conditions of his own creation or connivance in the making of an exceptional rate, then these will not avail him. If the carrier claims to act under a compulsion of circumstances and conditions which he could obviate by reasonable, fair and just exertion on his part, in the making of an exceptional rate, then they will not avail him."

Now it is one of the plain duties of the carrier to properly equip its road with all such cars as experience has shown to be necessary for the right movement of freight along its line, and in like manner to have depots and arrangements for the proper and necessary receipt and delivery of freight at stations along its line. A carrier is not warranted under the statute in setting up its own omission in these respects to justify an exceptional rate which unjustly discriminates against one locality in favor of all others and against one kind of traffic in favor of another.

From the standpoint of the carriers a ground that it was insisted justified the large difference made in the rate upon

live hogs and packing-house product on shipments of these articles from Missouri river and intermediate points west of the Mississippi river to Chicago, was found in the alleged fact that the existence of packing houses at Missouri river points and at intermediate points between the Missouri river and Mississippi river furnished defendant carriers more tonnage, than if the live hogs were shipped from that part of the country to Chicago for packing-house purposes or for eastern packeries and markets. That came about, it was said, in this way: That coal, cooperage, salt and ice used in packing-house work had to be transported in large quantities to the packeries west of the Mississippi river for long distances, upon which the carriers received freight; then the carriers received freight in transporting the live hogs to the same packeries to be converted into packing-house product; and afterward the carriers had the haul on the packing-house product to Chicago or points east But this cannot justify the carriers in this discrimination against the packers and buyers of Chicago. Packers at Chicago, as well as at points east of Chicago, have to pay railroads for hauling coal or other fuel used for packing-house purposes, and cooperage or the materials out of which cooperage is made, and ice and salt, besides the rate on the live hog. Packeries, whether in the west or in the east, have their advantages and disadvantages in these respects. Live hogs may be cheaper at one, cooperage at another, coal at another, ice at another and salt at another, but these can not enter into the question of what is a relatively reasonable and just rate on live hogs and packing-house products from these packeries to the markets of the world. If considerations like these are to enter into the making of relative rates on live hogs and packing-house products from these different packeries to the markets of the world, they would involve the cost of coal or fuel, cooperage and ice at each of these different packeries, including cost of transportation or of manufacturing where any of them were the subject of manufacture, and would compel the rate-maker to enter into a labyrinth of calculations, estimates and speculations, resulting in puzzles such as would answer no possible purpose in arriving at what would be a just and reasonable

rate relatively upon live hogs and packing-house product. But the proposition reaches farther, and according to its logical results the packing house that gives the carrier the most tonnage, counting in the make-up of this tonnage, supplies brought in, live hogs brought in and packing-house product carried out, ought to have lower rates made in its favor upon its product, than its neighbor packing house, which furnishes less tonnage to the carrier, counting in the constituent elements of this tonnage, supplies brought in, live hogs brought in and packing-house products carried out; and according to a recent decision of the United States Circuit Court in Ohio in the case of the Interstate Commerce Commission *v.* The Baltimore & Ohio R. Co., 3 I. C. C. Rep. 192, involving party rates, the carriers could make such a concession on this ground, if they saw proper to do so; but we can not give our assent to such a doctrine.

Some of the carriers further insist that the rate on the live hogs from the interior of the State of Iowa, for example, to the packing houses at Sioux City, added to the rate on the packing-house product from the packing houses at Sioux City, is but a trifle more than the rate on live hogs from the first point of shipment to Chicago, and that this equalizes the rates relatively on live hogs and on product. But this overlooks the important fact that when the product has reached Chicago it is worth 57 per cent. more per 100 pounds the hog round than the live hogs from which it is made; and this product is then ready to be put upon the market at Chicago or elsewhere; while the Chicago packer or buyer has only his live hogs brought to him at a much higher rate than the product, and must go to the expense of putting these hogs into product for the market there or elsewhere. This method of adjusting the rates between live hogs and the product is one that gives an enormous and unequal advantage to the Sioux City packer against the Chicago packer and buyer; and it gives the same advantage in a corresponding degree to all the packing houses at Missouri river points and in the interior of the States of Iowa and Missouri, as against the buyers and packing houses of Chicago. In the case of James and Abbott *v.* The East Tennessee, Virginia & Georgia Rail-

way Company and others, 3 I. C. C. Rep. 225, the Commission held that a separate local haul of freight, complete in itself, could not be added to another different and subsequent haul of the same freight as an element in the adjustment of relative rates between the last haul and a haul of similar freight from still another and different point on the same line to the same common destination. Here the haul of live hogs, for example, to Sioux City is one separate, distinct and complete service, for which the carrier is paid its rate. Then the haul of the product from Sioux City to Chicago is another distinct, separate and complete service for which the carrier is paid its rate. Now it is not fair or lawful to add these two separate and distinct rates thus earned upon different articles together and then to say that for an equal number of live hogs shipped from the same point in Iowa, or one equally distant to Chicago, the Chicago packer or buyer must pay a rate equal to that combined rate, first on the live hogs to and afterwards on the product from Sioux City. There is no element of justice or fairness in it.

The intervenors insist that there is a considerable shrinkage of the live hog in being transported in cars a long distance, and that the meat is in better condition when converted into product near where the hogs are reared and fresh than if this is done after the hogs are transported a long distance, because the hogs are then in better condition. As we have already said, the evidence at the hearing did show that there was an average shrinkage of from three to five per cent. in the weight of a hog from Missouri river points and interior points in the States of Iowa and Missouri in a haul to Chicago, but how permanent this was or to what extent, if at all, it was or was not remedied by rest and feed was not shown. At all events the transportation business of the country has demonstrated that live hogs may, as articles of commerce, be transported great distances without any material injury or loss in value. There was no evidence before the Commission that the product of the hog was better meat or more valuable when packed at Missouri river points or at the interior packing-

houses of Iowa and Missouri than at Chicago, or that it bore higher market quotations. But if this theory of the intervenors is true, regarding the correctness of which we express no opinion, then they have the advantage of it. Whatever shrinkage there is in the weight of the live hog, in being transported to Chicago or to more eastern packeries or markets, is an advantage which the intervenors have over Chicago and the eastern buyers. But it is impossible to conceive upon what principle either or both of these considerations can justify the giving of the preferential rates here shown to the intervenors and others similarly situated and the burdening of buyers and packers at Chicago with the oppressive discrimination shown in this proceeding.

The difference in these rates is also defended by the intervenors on the ground that immense investments of capital have been made in the establishment of packing-houses at Missouri river points and in the interior of Iowa and Missouri which give employment to a large number of persons; that business in those States has adjusted itself to this condition of affairs, and that now to make the change in these rates claimed by petitioners would break up and ruin those packing houses. It appears that very large amounts of capital have been invested in these packing houses; that they give employment to a great many persons, and although there is no specific evidence on that precise subject, yet it may be fairly inferred, and indeed the conclusion is fully warranted, that business in those States has adjusted itself to this condition of affairs on a more or less large scale. But is it necessary to save these vast establishments, thus advantageously situated near where the hogs are reared, from bankruptcy that these preferential rates should be given in their favor and that these heavy discriminations should be laid upon the packers and buyers of Chicago? Why is it that the same rates are made on the live hog and its products from the territory in which these packing houses are located, with the exception of Sioux City, *via* Mississippi river points to eastern markets and seaboard cities, but that Chicago must stand as a solitary exception to this rule, and that its packers and buyers cannot come into this territory to purchase

live hogs except under the heavy hand of these discriminations? It is absolutely incredible, and the evidence does not show, that if the rates were made the same on live hogs as on the product from all points in this territory to Chicago that it would bankrupt or materially cripple in business a single one of these packing houses. There is nothing in the evidence that shows or warrants the belief that the farmers who raise hogs in Iowa, Kansas, Nebraska and Missouri receive any additional price for their hogs by reason of this discrimination which shuts Chicago packers and buyers out of the market in competing for the purchase of their hogs to a very large extent. On the contrary, these hogs, as one of the staple products of the country, would be different from all other articles of commerce if the competition of more buyers did not bring a better price to the producer.

A business like that, involving the preparation for and consumption of such a large and leading staple and necessary of life as meat, with all the competition that exists for it, is too large to be done in a corner. It is not entirely a new thing, and perhaps is very natural, for those located near where a great staple is grown to think that they have peculiar rights to railroad rates in the marketing of that staple, growing out of what they call their "geographical position and advantages." An instance of this kind is seen in the cotton of the Southern States, which is another great staple. There one market not far distant from the cotton fields insists that northern and New England mills shall be charged as high a transportation rate, according to distance, from the cotton fields as the charge made that market, without regard to whether the respective rates are through or local, or controlled by the existence of water competition. If this was done, of course buyers for New England mills and foreign spinners, instead of competing for the purchase of cotton at interior markets still nearer to the cotton fields than the one first named, would be shut out from those markets, and would be found buying cotton chiefly in the market asserting this claim. In regard to that business there is also an ingenious theory that compressing the cotton into small bales of great density for purposes of transportation seriously injures the fibre, and that it

makes better and more durable goods if not so compressed, which would give the factories near the cotton fields nothing more than they are fairly entitled to, in the public interest, that this cotton should be manufactured into goods by them, instead of being spoiled by such compression, and shipped off to northern and New England mills and foreign spinners. But we were forced to the conclusion that this also was rather too large a business to be done upon such narrow lines. Experience had demonstrated that cotton as an article of commerce could be compressed into small bales for the purposes of long transportation without any material injury to it. Of course the markets and factories near the cotton fields still had advantages arising from nearness of location, but rates under all the circumstances and conditions of transportation, which were relatively reasonable and just, remained, so that northern and eastern mills, and foreign spinners, could go into the interior markets nearest the cotton fields and compete with local buyers for the cotton. This enhanced the price of cotton to the producer. And where it was thus purchased by buyers for New England mills or for foreign spinners they had it compressed for a long through haul or for ocean carriage as the case might be.

As articles of commerce, the evidence shows without conflict that the live hog and its product are in direct competition with each other. This only brings out in a stronger light the discrimination that is made against the traffic in the live hog as compared with the traffic in the product. Of the two the product is very much the more valuable; it is transported at more expense to the carrier; and yet much lower rates on it are charged for shipping to Chicago than upon the live hogs. It is indeed a crushing discrimination. We have looked through the evidence in vain to find any fact or circumstance which fairly and justly sustains it. We have carefully considered the able and ingenious arguments made by the counsel for the intervenors in behalf of their clients and the carriers with a like result. According to the practice of the carriers themselves it is an unlawful preference given to one kind of traffic as against another. It is clearly in violation of the third section of the Act to regulate commerce, in this,

that it is an unjust discrimination in favor of one kind of traffic and an unlawful prejudice against another kind of traffic; and also in this, that it is an unlawful discrimination in favor of other markets and buyers, and an unlawful prejudice against the City of Chicago, and the packers and buyers in that city.

The order of the Commission is, that the defendant carriers must forthwith cease and desist from the unjust discrimination now made by them in rates on live hogs and packing-house product from Missouri river points and from interior points in the States of Iowa and Missouri upon shipments of these articles to the City of Chicago, and that the rates made by them upon live hogs shall not be greater than upon packing-house products carried by them respectively on each of their lines from Missouri river points and from all intermediate points in the States of Iowa and Missouri to the City of Chicago, in the State of Illinois. And to enable each of the said carriers to comply with this order with as little inconvenience as possible, and upon proper notice to the public, they are allowed until the 15th day of November, in the year 1890, to print and post their tariffs and comply with this order.

The chairman did not participate in the making of this decision.

THE POUGHKEEPSIE IRON COMPANY, COMPLAINANT, v. THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY; THE BOSTON & ALBANY RAILROAD COMPANY, AND THE CONNECTICUT RIVER RAILROAD COMPANY, DEFENDANTS.

Complaint filed August 5, 1889.—Answer filed August 26, 1889.—Amended Complaint filed December 10, 1889.—Answers filed December 27, 1889–January 8, 1890.—Heard March 4, 1890.—Brief for Complainant filed July 12, 1890.—Decided October 20, 1890.

1. Pig iron is one of the lowest classes of freight, and the rates on that article complained of in this proceeding are not found to be unjust and unreasonable either in themselves or relatively as charged petitioner compared with rates from Youngstown and Cleveland, Ohio.

2. Rates charged petitioner by the defendants on pig iron are in themselves, as well as relatively, the same in substance as rates charged other manufacturers of pig iron at the producing furnaces in the State of New York.

3. Through rates on long hauls more usually than local rates on short hauls encounter water competition and are made lower in proportion to distance by this cause as well as other causes which have been repeatedly discussed and considered by the Commission; and the doctrine contended for by the petitioner in this proceeding, that an estimated proportion of the through rate must not be less according to distance than the local rate from an intermediate point to another point named in the line covered by the through rate, has often been held by the Commission to be untenable. See Detroit Board of Trade *et al.* *v.* The Grand Trunk Railway Company and others, 2 I. C. C. Rep. 320; New Orleans Cotton Exchange *v.* the Illinois Central Railroad Company *et al.*, 3 I. C. C. Rep. 534.

4. The cost of the production of pig iron at a furnace situated like that of petitioner on the Hudson River, in the State of New York, is much greater than at Youngstown, Ohio, or Birmingham, Alabama, or at other points in the West and South; and while the aggregate rate charged petitioner to New England mills is a great deal lower than the aggregate rate charged on these western and southern irons to the same mills, yet it is not sufficiently so to overcome the difference in the cost of production, and the consequence is that petitioner finds

itself at a serious disadvantage in competing with these western and southern irons in the markets and mills of the New England States where there is a very great demand for this class of property.

5. The Commission has no power and authority in this proceeding to order other carriers not parties to this proceeding to raise their rates on pig iron transported from Youngstown and Cleveland, Ohio, to New England points in order to overcome the difference in the cost of production of pig iron now existing against petitioner; nor would the Commission enter upon the consideration of any such subject in a proceeding to which such carriers were not parties, and in which such localities sought to be burdened with higher rates, for example, Youngstown and Cleveland, Ohio, had no opportunity to be heard; and the findings of fact in the present proceeding, which show that the rates already charged petitioner by the defendants are in themselves as well as relatively, just and reasonable rates, demonstrate that the Commission could not order the defendants to lower these rates from Poughkeepsie to all points on the Boston & Albany Road one-half, and to Holyoke nearly one-half, in order to overcome the difference in the cost of production of pig iron now existing against petitioner.

W. C. Holbrook, for Complainant.

Frank Loomis, for New York Central and Hudson River Railroad Company.

Samuel Hoar, for Boston & Albany Railroad Company.

N. A. Leonard, for Connecticut River Railroad Company.

REPORT AND OPINION OF THE COMMISSION.

BRAGG, *Commissioner:*

The original petition in this proceeding, as amended, avers that the petitioner is a corporation organized under the laws of the State of New York, for the purpose of manufacturing, selling and shipping pig iron at and from Poughkeepsie, in said State to points in Massachusetts and other States.

That petitioner owns two blast furnaces at Poughkeepsie; formerly owned two others at the same place, which it has ceased to operate within the last two years, owing, among other things, as is alleged, to the unjust and unreasonable rates exacted and unjust discriminations practiced by the defendants in the transportation of pig iron to points termed competing points in the State of Massachusetts on the lines of

the Boston & Albany Railroad and the Connecticut River Railroad.

That defendants are common carriers, subject to the Act to regulate commerce, and have some arrangement for continuous carriage of freight from Poughkeepsie *via* Albany and Hudson, in the State of New York, to Boston, Worcester, Springfield, Holyoke and other competing points in the State of Massachusetts.

That, by agreement existing between defendants, petitioner has been compelled to ship pig iron to Holyoke over the lines of the defendants, and such pig iron as is destined to Boston, Worcester, Springfield and other competing points in Massachusetts, over the lines of the New York Central and Boston & Albany Railroad; that since the passage of the Act to regulate commerce, petitioner has not been able to ship to Holyoke owing to the excessive and unreasonable rates charged by the defendants under the said agreement or arrangement; that petitioner has repeatedly applied to the defendants for lower rates to Holyoke but has been refused, and for a year and upwards has lost the benefit of that market; that petitioner still ships large quantities of pig iron, although at great disadvantage, to Worcester and other competing points in the State of Massachusetts over the lines of the New York Central and Boston & Albany Railroad; and that petitioner has applied to these companies for lower rates to these points, and both refused to change the rates fixed by them under their said agreement.

That the rates charged under said agreement have greatly damaged the petitioner in the past, and if such rates on pig iron from Poughkeepsie *via* Albany and Hudson are allowed to be maintained great, if not irreparable, damage will result to the petitioner in the future.

Petitioner complains that the rates under said agreement are in effect an unjust discrimination and amount to a specific rate or other device to receive from petitioner a greater compensation for the service rendered in the transportation of pig iron from Poughkeepsie *via* Albany and Hudson to Boston, Worcester, Springfield, Holyoke and other competing points in Massachusetts, than they receive for their share of

the haul over the same lines and for the same distance from any other person for a like and contemporaneous service; and petitioner upon information and belief, charges that the defendants receive less for transporting pig iron from Albany to the points before named in Massachusetts from persons dealing in pig iron at Youngstown, Ohio, and other points west of Albany, than they receive for transporting petitioner's pig iron from Poughkeepsie *via* Albany eastward to said competing points over the same line and distance, and that therefore the defendants are to be deemed guilty of violating section two of the Act to regulate commerce.

Petitioner further complains against the rates under said agreement, because, as is alleged, they give an undue advantage and preference to persons and companies in Youngstown, Ohio, and other points in that State, and other points west of Albany, by accepting and receiving as their share of the through rate lower rates from such remote western points eastward from Albany over their lines to said competing points in Massachusetts than they accept and receive as their share under said agreement for transporting petitioner's pig iron from Poughkeepsie eastward from Albany to said competing points over the same lines and distances, thereby violating section three of said Act to regulate commerce.

Petitioner further complains of the charges under said agreement for the transportation of pig iron from Poughkeepsie to the points in Massachusetts before named *via* Albany as compared with the share of rates received by defendants for transporting pig iron and other like kinds of property from points in Ohio and west of Albany over their lines eastward from Albany, and charges that this amounts to charging and receiving from complainant a greater compensation in the aggregate for the transportation of pig iron over the lines of the defendants than for other like kinds of property and for other property of a higher grade or class, such as grain and other traffic, under substantially similar circumstances and conditions, for a shorter than for a longer distance, over the same line in the same direction, in violation of section four of the Act to regulate commerce.

That petitioner has requested defendants to make the rates from Poughkeepsie to the points before named in Massachusetts *via* and eastward from Albany and Hudson, as aforesaid, the same as the share they receive for the shipments from Youngstown and points west of Albany, but the defendants refuse to do so, so that defendants receive from dealers in pig iron from Youngstown and other points west of Albany, lower rates for that transportation of pig iron eastward from Albany than they charge petitioner eastward from Albany to such competing points.

Petitioner further complains of the defendants, that the rates charged for the transportation of pig iron from Poughkeepsie to the points in Massachusetts before named on the lines of the Boston & Albany and Connecticut River railroads are arbitrary, unjust and unreasonable, and that the last two named defendants charge an arbitrary, unjust and unreasonable division of the rates in favor of themselves under said agreement. That the Connecticut River Railroad Company makes an unjust discrimination against petitioner in all consignments of its pig iron to Holyoke in this, that it charges for transporting such pig iron from Springfield to Holyoke, a distance of about eight miles, at the rate of 60 cents per ton, which is an unjust, excessive and unreasonable rate, and a much greater rate than it accepts on western freight over the same line and distance, and thereby petitioner is greatly damaged.

The prayer of the petitioner is that the defendants be required to answer the petition, and that the Commission, after investigation, order the defendants to cease and desist from said violations of the Act to regulate commerce.

Each of the defendants filed an answer to this petition denying its material averments.

Upon the evidence adduced on the hearing the material facts found in this proceeding for the purpose of the conclusions and opinion reached by the Commission are substantially as follows:

The Poughkeepsie Iron Company is a corporation incorporated under the laws of the State of New York and doing business in the City of Poughkeepsie in said State. It owns two blast furnaces with an annual production of 30,000 tons of pig iron. Two or three years previous to the time of the filing of this petition it owned and operated two other blast furnaces, and then had an annual production of about 50,000 tons of pig iron. Previous to the closing out of the two furnaces last mentioned the Poughkeepsie Iron Company had invested large sums of money in these plants, which the evidence tends to show was about $850,000, and that besides this the company had mining interests of the value of about $500,000.

The defendants are common carriers subject to the Act to regulate commerce in their interstate business. Within the last two or three years the rates from Poughkeepsie to points in Massachusetts over the lines of the New York Central & Hudson River Railroad Company and the Boston & Albany have been lowered from $2.50 to $2 per ton.

During the past fifteen years there were eighteen furnaces on the Hudson river engaged in the manufacture of pig iron, but all of these except the Poughkeepsie Company's furnace, have ceased operation. The cause of this has been the difficulty of manufacturing the product and selling it in competition with the Pennsylvania and Ohio furnaces at points in the State of Massachusetts. This difficulty has been due to a large extent to the fact that the price of coal, used as fuel in the manufacture of pig iron at Poughkeepsie and the other furnaces along the Hudson river, has been very greatly higher than it has been at furnaces in Pennsylvania and other western States. The principal items in producing pig iron are fuel, ore, limestone and labor. One of the chief items of expense is fuel, and it requires from one and a quarter to one and one-half tons of coal to make a ton of pig iron. A ton of coal laid down at Poughkeepsie from mines in the State of Pennsylvania costs $3.80 per ton, while at Youngstown coal costs scarcely half that much.

There are several kinds of pig iron; that made from charcoal is used very little in the manufactories; anthracite pig

iron and coke pig iron are similar and are used for the same purposes. There is no competition between charcoal iron and anthracite pig iron, but there is such competition between anthracite pig iron and coke pig iron. The complainant uses anthracite coal in the manufacture of its pig iron. The furnaces at Youngstown, Ohio, use coke in the manufacture of their pig iron, which is greatly cheaper and obtained at much less cost of transportation expense and otherwise.

Petitioner in the eastern markets of Massachusetts, Rhode Island, New Hampshire and Connecticut has to meet the competition of the iron from the west—from Youngstown and Cleveland, and also to a large extent from the south—points like Birmingham and others. Western and southern iron are sold in Massachusetts considerably less per ton than the iron made by petitioner. Iron from the southern States comes to Boston nearly all the way by water, and from Boston by rail to interior points in the State of Massachusetts. There is no competition with imported iron.

From 30 to 35 per cent. of petitioner's production of 30,000 tons of pig iron goes to New England, the principal points being Providence, Boston, Worcester, Westfield, Springfield and New Haven. At each of these points petitioner has to compete with western, southern and Lehigh iron.

Poughkeepsie pig iron sells in Holyoke at $21.50 per ton; that is $19.00 per ton at the furnaces and $2.50 for freight. Western iron sells in Holyoke at $20.00 per ton, which nets the western furnaces $16.20 per ton, $3.80 being for freight. In this competition, and at the period to which this refers, petitioner was offering iron at Holyoke for $21.00 per ton, and this was shortly before the petition was filed.

The rate from these western points is relatively lower, but not absolutely lower than the Poughkeepsie rate; it is in fact $1.30 higher than the Poughkeepsie rate per ton.

The petitioner ships iron as far east as Boston, and as far west as Syracuse in the State of New York, but it cannot ship further west than Syracuse because of the competition of western iron.

The rate from Poughkeepsie to points on the Boston & Albany Railroad is $2.00 per gross ton, and the rate from Springfield to Holyoke over the Connecticut River Railroad is 50 cents, thus making the rate from Poughkeepsie to Holyoke $2.50 per ton.

From the 27th of June to the 1st of September, 1889, the rate to Boston and Boston points from Cleveland, Ohio, was $3.80 per gross ton of pig iron, and from Youngstown, Ohio, the rate was $3.70; the present rate which has been in force since the 13th of September, 1889, is $4.00 per ton from Youngstown, and $4.30 per ton from Cleveland, to these points. Of the present rate from points west of Albany the Boston & Albany Railroad receives as its share 73.9 per cent., and the Connecticut River Railroad receives 26.1 per cent., in addition to which the latter road gets a terminal charge of 1 cent per 100 pounds, which is deducted before the division is made. In transporting pig iron from points west of Albany, such as Youngstown and Cleveland, the lines east of Albany get 28.84 per cent. of the entire through rate; and, as above stated, on a shipment to Holyoke the Boston & Albany of that amount would get 73.9 per cent., and the Connecticut River Railroad Company would get 26.1 per cent., together with its terminal charge of 1 cent per 100 pounds, which terminal charge would have to be deducted before any division is made, as already stated. For example, the rate from Youngstown to Boston and Boston points, such as Holyoke, is at present $4 per ton. On a shipment, therefore, from Youngstown to Holyoke, to find the proportions received by each road, first deduct 20 cents as the terminal charge of the Connecticut River Railroad, this leaves $3.80; 28.84 per cent. of this, the proportion received by the roads east of Albany, would be $1.09; of this $1.09 the Boston & Albany Railroad Company would receive 73.9 per cent. and the Connecticut River Railroad Company 26.1 per cent., or 81 cents and 28 cents, respectively; the result would be that from this through rate the Boston & Albany would receive 81 cents per ton of pig iron and the Connecticut River Railroad Company would receive 28 cents plus 20 cents (its terminal charge), or 48 cents per ton.

No through rate is made from Poughkeepsie to Holyoke, but the Connecticut River Railroad Company's charge is added to the rate of the Boston & Albany Railroad Company to Springfield. Through rates are made from western points, such as Youngstown, Ohio, Cleveland, Ohio, and other western furnaces, to Holyoke. Since June, 1889, the Boston & Albany Railroad Company has received 66 per cent. of the joint rate from Poughkeepsie to Springfield, and to points east of Springfield 75 per cent., except to East Boston and East Cambridge, where the Boston & Albany gets 76 per cent. of the rate. At the rate of $2 per ton from Poughkeepsie to Springfield the Boston & Albany would get $1.26, while out of the $2 rate to Worcester it would get $1.50 per ton. At the $4.30 rate per ton from Cleveland to Springfield the Boston & Albany would get $1.26, and from Youngstown out of the $4 rate per ton it would get $1.15. On shipments from the west many points take the Boston rate, such as Providence on the Providence & Worcester Railroad. Out of the rate to that city the Boston & Albany gets 78 per cent. and the Providence & Worcester 22 per cent.; but where this division is made a terminal charge has to be deducted.

In the classification pig iron is in the lowest class—the sixth. The rates on pig iron from Poughkeepsie to the points named in Massachusetts, Connecticut and Rhode Island are far below that. The sixth-class rate to Boston is 18 cents per 100 pounds from Poughkeepsie; this would make $3.60 per ton on pig iron, while the rate is actually only $2 per ton on pig iron.

The Boston & Albany Railroad Company charges the same rate from stations on its own line where there are furnaces as it does from Hudson and Poughkeepsie. The rate is made the same from Poughkeepsie, so as to give the Poughkeepsie shipper the benefit of the rate and give him the same advantages as shippers on the line of the Boston & Albany Railroad. The Boston & Albany Railroad Company gets less out of the rate from Poughkeepsie than from Copake; out of the former it gets $1.26 per ton and from the latter $1.50 per ton on pig iron. For the same distance the Boston & Albany gets 11 cents less per ton on Youngstown iron than on

that it is an unjust discrimination in favor of one kind of traffic and an unlawful prejudice against another kind of traffic; and also in this, that it is an unlawful discrimination in favor of other markets and buyers, and an unlawful prejudice against the City of Chicago, and the packers and buyers in that city.

The order of the Commission is, that the defendant carriers must forthwith cease and desist from the unjust discrimination now made by them in rates on live hogs and packing-house product from Missouri river points and from interior points in the States of Iowa and Missouri upon shipments of these articles to the City of Chicago, and that the rates made by them upon live hogs shall not be greater than upon packing-house products carried by them respectively on each of their lines from Missouri river points and from all intermediate points in the States of Iowa and Missouri to the City of Chicago, in the State of Illinois. And to enable each of the said carriers to comply with this order with as little inconvenience as possible, and upon proper notice to the public, they are allowed until the 15th day of November, in the year 1890, to print and post their tariffs and comply with this order.

The chairman did not participate in the making of this decision.

THE POUGHKEEPSIE IRON COMPANY, COMPLAINANT, v. THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY; THE BOSTON & ALBANY RAILROAD COMPANY, AND THE CONNECTICUT RIVER RAILROAD COMPANY, DEFENDANTS.

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1. Pig iron is one of the lowest classes of freight, and the rates on that article complained of in this proceeding are not found to be unjust and unreasonable either in themselves or relatively as charged petitioner compared with rates from Youngstown and Cleveland, Ohio.

2. Rates charged petitioner by the defendants on pig iron are in themselves, as well as relatively, the same in substance as rates charged other manufacturers of pig iron at the producing furnaces in the State of New York.

3. Through rates on long hauls more usually than local rates on short hauls encounter water competition and are made lower in proportion to distance by this cause as well as other causes which have been repeatedly discussed and considered by the Commission; and the doctrine contended for by the petitioner in this proceeding, that an estimated proportion of the through rate must not be less according to distance than the local rate from an intermediate point to another point named in the line covered by the through rate, has often been held by the Commission to be untenable. See Detroit Board of Trade *et al. v.* The Grand Trunk Railway Company and others, 2 I. C. C. Rep. 320; New Orleans Cotton Exchange *v.* the Illinois Central Railroad Company *et al.*, 3 I. C. C. Rep. 534.

4. The cost of the production of pig iron at a furnace situated like that of petitioner on the Hudson River, in the State of New York, is much greater than at Youngstown, Ohio, or Birmingham, Alabama, or at other points in the West and South; and while the aggregate rate charged petitioner to New England mills is a great deal lower than the aggregate rate charged on these western and southern irons to the same mills, yet it is not sufficiently so to overcome the difference in the cost of production, and the consequence is that petitioner finds

itself at a serious disadvantage in competing with these western and southern irons in the markets and mills of the New England States where there is a very great demand for this class of property.

5. The Commission has no power and authority in this proceeding to order other carriers not parties to this proceeding to raise their rates on pig iron transported from Youngstown and Cleveland, Ohio, to New England points in order to overcome the difference in the cost of production of pig iron now existing against petitioner; nor would the Commission enter upon the consideration of any such subject in a proceeding to which such carriers were not parties, and in which such localities sought to be burdened with higher rates, for example, Youngstown and Cleveland, Ohio, had no opportunity to be heard; and the findings of fact in the present proceeding, which show that the rates already charged petitioner by the defendants are in themselves as well as relatively, just and reasonable rates, demonstrate that the Commission could not order the defendants to lower these rates from Poughkeepsie to all points on the Boston & Albany Road one-half, and to Holyoke nearly one-half, in order to overcome the difference in the cost of production of pig iron now existing against petitioner.

W. C. Holbrook, for Complainant.

Frank Loomis, for New York Central and Hudson River Railroad Company.

Samuel Hoar, for Boston & Albany Railroad Company.

N. A. Leonard, for Connecticut River Railroad Company.

REPORT AND OPINION OF THE COMMISSION.

BRAGG, *Commissioner:*

The original petition in this proceeding, as amended, avers that the petitioner is a corporation organized under the laws of the State of New York, for the purpose of manufacturing, selling and shipping pig iron at and from Poughkeepsie, in said State to points in Massachusetts and other States.

That petitioner owns two blast furnaces at Poughkeepsie; formerly owned two others at the same place, which it has ceased to operate within the last two years, owing, among other things, as is alleged, to the unjust and unreasonable rates exacted and unjust discriminations practiced by the defendants in the transportation of pig iron to points termed competing points in the State of Massachusetts on the lines of

the Boston & Albany Railroad and the Connecticut River Railroad.

That defendants are common carriers, subject to the Act to regulate commerce, and have some arrangement for continuous carriage of freight from Poughkeepsie *via* Albany and Hudson, in the State of New York, to Boston, Worcester, Springfield, Holyoke and other competing points in the State of Massachusetts.

That, by agreement existing between defendants, petitioner has been compelled to ship pig iron to Holyoke over the lines of the defendants, and such pig iron as is destined to Boston, Worcester, Springfield and other competing points in Massachusetts, over the lines of the New York Central and Boston & Albany Railroad; that since the passage of the Act to regulate commerce, petitioner has not been able to ship to Holyoke owing to the excessive and unreasonable rates charged by the defendants under the said agreement or arrangement; that petitioner has repeatedly applied to the defendants for lower rates to Holyoke but has been refused, and for a year and upwards has lost the benefit of that market; that petitioner still ships large quantities of pig iron, although at great disadvantage, to Worcester and other competing points in the State of Massachusetts over the lines of the New York Central and Boston & Albany Railroad; and that petitioner has applied to these companies for lower rates to these points, and both refused to change the rates fixed by them under their said agreement.

That the rates charged under said agreement have greatly damaged the petitioner in the past, and if such rates on pig iron from Poughkeepsie *via* Albany and Hudson are allowed to be maintained great, if not irreparable, damage will result to the petitioner in the future.

Petitioner complains that the rates under said agreement are in effect an unjust discrimination and amount to a specific rate or other device to receive from petitioner a greater compensation for the service rendered in the transportation of pig iron from Poughkeepsie *via* Albany and Hudson to Boston, Worcester, Springfield, Holyoke and other competing points in Massachusetts, than they receive for their share of

the haul over the same lines and for the same distance from any other person for a like and contemporaneous service; and petitioner upon information and belief, charges that the defendants receive less for transporting pig iron from Albany to the points before named in Massachusetts from persons dealing in pig iron at Youngstown, Ohio, and other points west of Albany, than they receive for transporting petitioner's pig iron from Poughkeepsie *via* Albany eastward to said competing points over the same line and distance, and that therefore the defendants are to be deemed guilty of violating section two of the Act to regulate commerce.

Petitioner further complains against the rates under said agreement, because, as is alleged, they give an undue advantage and preference to persons and companies in Youngstown, Ohio, and other points in that State, and other points west of Albany, by accepting and receiving as their share of the through rate lower rates from such remote western points eastward from Albany over their lines to said competing points in Massachusetts than they accept and receive as their share under said agreement for transporting petitioner's pig iron from Poughkeepsie eastward from Albany to said competing points over the same lines and distances, thereby violating section three of said Act to regulate commerce.

Petitioner further complains of the charges under said agreement for the transportation of pig iron from Poughkeepsie to the points in Massachusetts before named *via* Albany as compared with the share of rates received by defendants for transporting pig iron and other like kinds of property from points in Ohio and west of Albany over their lines eastward from Albany, and charges that this amounts to charging and receiving from complainant a greater compensation in the aggregate for the transportation of pig iron over the lines of the defendants than for other like kinds of property and for other property of a higher grade or class, such as grain and other traffic, under substantially similar circumstances and conditions, for a shorter than for a longer distance, over the same line in the same direction, in violation of section four of the Act to regulate commerce.

That petitioner has requested defendants to make the rates from Poughkeepsie to the points before named in Massachusetts *via* and eastward from Albany and Hudson, as aforesaid, the same as the share they receive for the shipments from Youngstown and points west of Albany, but the defendants refuse to do so, so that defendants receive from dealers in pig iron from Youngstown and other points west of Albany, lower rates for that transportation of pig iron eastward from Albany than they charge petitioner eastward from Albany to such competing points.

Petitioner further complains of the defendants, that the rates charged for the transportation of pig iron from Poughkeepsie to the points in Massachusetts before named on the lines of the Boston & Albany and Connecticut River railroads are arbitrary, unjust and unreasonable, and that the last two named defendants charge an arbitrary, unjust and unreasonable division of the rates in favor of themselves under said agreement. That the Connecticut River Railroad Company makes an unjust discrimination against petitioner in all consignments of its pig iron to Holyoke in this, that it charges for transporting such pig iron from Springfield to Holyoke, a distance of about eight miles, at the rate of 60 cents per ton, which is an unjust, excessive and unreasonable rate, and a much greater rate than it accepts on western freight over the same line and distance, and thereby petitioner is greatly damaged.

The prayer of the petitioner is that the defendants be required to answer the petition, and that the Commission, after investigation, order the defendants to cease and desist from said violations of the Act to regulate commerce.

Each of the defendants filed an answer to this petition denying its material averments.

Upon the evidence adduced on the hearing the material facts found in this proceeding for the purpose of the conclusions and opinion reached by the Commission are substantially as follows:

ticut River Railroad Company for hauling pig iron from Springfield to Holyoke, a distance of eight miles, and delivering it to consignees on branch tracks at a distance of one mile from Holyoke, there is nothing in that rate for so short a haul and for such a service that is found to be unreasonble or unjust. It is customary and usual upon such very short hauls and for so light a traffic to charge higher rates for freight as well as passenger service per mile than in the case of long roads which have a large volume of business, and there are many grounds upon which it can be justified. It appears that this rate has been in effect for about fifteen years and has never been challenged until now.

The disadvantage under which petitioner labors is clearly shown by the evidence. It is not in the rates of the carriers; it is in the cost of production of pig iron at Poughkeepsie and the competition of western and southern iron; it is because pig iron can be produced much more cheaply at Youngstown and Cleveland and in some of the Southern States than it can at Poughkeepsie. This is seen in the one item of fuel alone, which in the shape of anthracite coal from Pennsylvania costs three dollars and eighty cents per ton at Poughkeepsie, and it requires one and a fourth to one and a half tons of such coal to make a ton of pig iron. At Youngstown the cost of a ton of coke was estimated by one of the witnesses to not exceed $2 per ton. But it is very doubtful if it amounts even to that. In Birmingham, Alabama, the cost of coke used in the manufacture of pig iron is considerably less than that.

The mills that manufacture this pig iron in various ways for purposes of use are chiefly in the New England States, and among them in this respect Massachusetts is one of the leading States. Such mills are not so plentiful in the west and are very scarce in the south; and it results from this that there is a very large surplus of pig iron in the west and south that seeks a New England market. Being one of the cheapest classes of freight it comes from the Southern States nearly all the way by sea and at exceptionally low rates. It comes from Ohio and Pennsylvania and other Western States on long hauls where rates are made low by competing lines

which recognize and are obliged to recognize the competition of water lines, and therefore haul this freight at very low rates. Under these circumstances it is not surprising that the petitioner should find itself having to contend with very strong competition in the sale of pig iron in the New England markets and laboring under disadvantages which are manifest.

According to the evidence in this proceeding, to enable the petitioner to have the relief sought it will be necessary that we direct the New York Central & Hudson River Railroad Company and the Boston & Albany Railroad Company to reduce their rates on pig iron to one dollar per ton from Poughkeepsie to Holyoke and other stations along the latter road in Massachusetts; and this we are not prepared to do for the reasons stated; or else it would be necessary to require the Lake Shore & Michigan Southern Railroad Company, the New York Central & Hudson River Railroad Company and the Boston & Albany Railroad Company to raise their rates one dollar per ton on pig iron carried by them from Youngstown and Cleveland to Holyoke and the other stations referred to. As to our power to order an advance of rates we refer to what was said in The Matter of the Chicago, St. Paul & Kansas City Railway Company, 2 I. C. C. Rep. 231. If the power was clear it would not be admissible to exercise it until in some new proceeding the communities and business interests that would thereby have an additional burden cast upon them had an opportunity to be heard as to its justice.

It results from the views and conclusions reached in this report and opinion that the petition in this proceeding must be, and the same is hereby, dismissed, without prejudice.

THE HARVARD COMPANY, COMPLAINANT, v. THE PENNSYLVANIA COMPANY; THE PENNSYLVANIA RAILROAD COMPANY; THE LAKE SHORE & MICHIGAN SOUTHERN RAILROAD COMPANY; THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY; THE BALTIMORE & OHIO RAILROAD COMPANY; THE GRAND TRUNK RAILWAY COMPANY; THE CLEVELAND, COLUMBUS, CINCINNATI & INDIANAPOLIS RAILROAD COMPANY; THE VALLEY RAILWAY COMPANY; THE NEW YORK, LAKE ERIE & WESTERN RAILROAD COMPANY; THE BOSTON & ALBANY RAILROAD COMPANY; THE NEW YORK & NEW ENGLAND RAILROAD COMPANY, AND THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY, DEFENDANTS.

Complaint filed October 12, 1889.—Answers filed October 29 to November 21, 1889.—Heard February 6, 1890.—Brief for Complainant filed February 26, 1890.—Decided October 23, 1890.

1. Where questions of classification and rates are involved as to one particular article of freight, it is often necessary to examine and consider the classification and rates upon other articles in which the same calculations in respect of value, bulk and expense of handling, and of carriage, would to a considerable extent enter; and for the purposes of such comparison it is not indispensably necessary that the articles should be competitive with each other, though if they are competitive then this feature must more strongly bring to view the fact of discrimination in rates, if there be such.

2. The valuable service performed to the transportation interests of the country by rate and classification committees. Rules recognized by the Commission in making of classifications and rates.

3. The mere fact that one article is of more general use and therefore shipped in greater quantities than another, when each as a rule is shipped in less than car-load quantities, and of no considerable difference in bulk, weight and value, and of no appreciable difference in expense of handling and of haul, constitutes in itself no reason why the first should receive a lower rate than the last. In such a case mere quantity, not measured by any recognized unit of quantity adapted to carriage, and lessening the expense of handling and carriage, cannot be allowed to affect rates in the transportation of property.

4. Surgical chairs compared with other freight and reasons stated as to what the rates on them should be as articles of commerce in course of transportation.

Case, Monnot & Whitaker, for complainant.
James T. Brooks, for Pennsylvania Co.
James A. Logan, for Pennsylvania R. R. Co.
George C. Greene, for L. S. & M. S. Ry. Co.
Frank Loomis, N. Y. C. & H. R. R. R. Co.
John K. Coren, for B. & O. R. R. Co.
E. W. Meddaugh and *William A. Day*, for G. T. Ry. Co.
Harmon, Colston, Goldsmith & Hoadly, for C., C., C. & I. Ry. Company.
Andrew Squire, for Valley Railway Co.
Samuel Hoar, for B. & A. R. R. Co.
R. M. Saltonstall, for N. Y. & N. E. R. R. Co.
J. A. Buchanan, for N. Y., L. E. & W. R. R Co.

REPORT AND OPINION OF THE COMMISSION.

BRAGG, *Commissioner:*

The petition in this proceeding states in substance that complainant is a corporation incorporated under the laws of the State of Ohio, doing business in the city of Canton, in that State, and is engaged in the manufacture and sale of surgical chairs and shipment thereof to other States over the lines of railroad severally owned and operated by the defendants, who are common carriers of interstate freight and passengers, and as such subject to the Act to regulate commerce.

That most of said freight is shipped primarily over the lines of railroad severally operated by the Pennsylvania Company and the Valley Railway Company, and thence over the lines of the other defendants.

That the Pennsylvania Company and the Valley Company on or about January 1st of each year require complainant to execute to them severally written releases, releasing them and all lines of railroad over which said freight *via* their roads is transported from all liability on account of damage thereto from rubbing, chafing or breaking as a condition of the acceptance thereof, and that said freight is shipped accordingly at owner's risk.

That said chairs are heavy, being made mostly of iron, and are compactly packed, wrapped and crated for shipment, and occupy when so prepared for shipment less than 3 by 3 feet floor space, stand less than 3 feet high, and weigh 225 pounds.

That said defendants classify said freight as double-first-class freight, which is unjust to the complainant and excessive and unreasonable; that according to a just and reasonable classification said freight ought not to be rated as it is packed for shipment above second-class freight; that the charges demanded and received by the defendants for transporting said freight are unjust and unreasonable, and that in justice and reason, according to the usual charges for like service by defendants, complainant and its customers ought not to be charged more than one-third the rate demanded and received by defendants.

The complainant and its customers have been greatly damaged by said unjust and unreasonable charges.

For these reasons complainant asks that the defendant be required to desist from charging it and its customers a rate higher than second-class freight.

The answers of the defendants to this petition are all in substance much the same. They each substantially deny that the classification of surgical chairs at double-first-class rates and the charges made for transporting the same are unjust and unreasonable. They also deny that the rate (sec-

ond-class) which complaint avers should be made, would be a just and reasonable one under the circumstances, or that complainant has suffered damage in consequence of the unjust and unreasonable charges made by the defendant.

The Pennsylvania Company further alleges that surgical chairs packed in boxes when shipped singly are classified at double-first-class rates, and when shipped in car-load lots at second-class rates, and that this classification was agreed upon and adopted by a committee of disinterested gentlemen of great experience and skill in matters relating to freight transportation, who after careful consideration of the relative rights of the manufacturers of surgical chairs and of the carriers, and as a matter of justice to both parties interested, recommended that said Company and other railway companies should adopt said Official Classification. This allegation is also contained in the answer of the New York, Lake Erie & Western Railroad Company, and the New York and New England Railroad Company sets up in its answer that the classification fixing the rates mentioned in the petition was agreed upon by a joint committee of the Central Traffic Association and the Trunk Line Association.

The Pennsylvania Railroad Company, the New York Central and Hudson River Railroad Company, the Boston & Albany Railroad Company, the Grand Trunk Railway Company of Canada, and the Baltimore & Ohio Railroad Company each avers that surgical chairs are not named in the classification, but under the rules articles not named are classed with analogous articles named in the classification, and therefore surgical chairs would naturally come in the class with dental chairs, which are classified by name at double-first-class; that other kinds of chairs are rated at from two and a half to four times first-class; that the only kinds of chairs classified at less than double-first-class are those placed in boxes or bundles.

That even when crated these surgical chairs occupy a cubic space of from 25 to 40 feet, and the better class of surgical chairs (to which class the defendants are informed the petitioner's chairs belong) are shipped with the backs set up and occupy a cubic space of forty feet; that these chairs are

rarely shipped except singly and never in car-load lots, and even at the present classification and rates a car-load would pay less than an average car-load of grain, flour or other low-class property.

The New York Central & Hudson River Railroad Company and the Boston & Albany Railroad Company further allege on information and belief that the surgical chairs manufactured by the complainant are patented, and the manufacturers are protected in their profits by such patents; that the freight classification is necessarily and properly adjusted to some extent on the principles analogous to those on which taxes are levied, the articles or the interests which can least afford to bear such burdens being given the benefit of low rates which the carriers cannot afford to give to all, and higher proportional rates being levied upon articles and implements which feel the burden less, and that this method of adjusting the rates has been and is of very high value to the country and may be said to be indispensable.

The facts material to the conclusions and the opinion reached by the Commission in this proceeding are found to be that the complainant is a corporation incorporated under and by virtue of the laws of the State of Ohio, having its principal office and place of business in the city of Canton in said State, with a branch factory in Toronto, in the Dominion of Canada. Its capital stock is $10,000. It has five stockholders. The surgical chair to which this controversy relates is patented. This chair is made of about 100 pounds of cast iron, 21 pounds of malleable iron and nine pounds of machinery steel. There are about 130 pounds of iron and steel in each chair. The balance is made up of wood and upholstery. The castings received from the foundry are drilled and riveted together, and then it is painted and varnished; then it is ready for upholstering. Some small parts of it are nickle-plated, the nickle-plating costing about $1.25 and the labor about a dollar; the cost of upholstering would be one-seventh the cost of the chair. The wood work of a few of these chairs is walnut, but they are mostly made of oak, though sometimes cherry and maple wood are used.

These chairs cost from $48 to $100. The chair most sold costs $70, that is, on time payments. Such a chair would be $63 cash. The next largest number sold would be $48; that is, $43.50 cash. During the past year the complainant has not sold over two chairs that cost $100.

For shipping, these chairs are wrapped in heavy paper, then the back is turned forward so as to fold over the seat of the chair, and it is crated. At the corners of the chair excelsior is placed between the crating and wrapping paper; at other points of the chair strips of leather are placed between the crating and the paper. The crating consists of nailing strips of wood across and over the chair so as to protect it from being rubbed or injured by other freight. When so crated these chairs are 35 inches wide, 36 inches long, and 34 inches high. The average weight is about 225 pounds. This weight varies slightly according to the upholstering and whether the crating is wet or dry. The average value of these chairs is about $60. They are billed as "one crated surgical chair partly knocked down." They are billed direct to the purchaser. At owner's risk, which is the usual way of shipping them, they are billed by the trunk lines east of Chicago as double-first-class.

These chairs were shipped in 1889 to all parts of the United States by rail and water, but in greater part by the former. They are shipped in ordinary freight cars and not in furniture cars. They are never shipped in car-load quantities and are usually shipped in shipments of one chair only. The testimony is very conflicting as to how many of them can be shipped in a car-load quantity, but as they are never shipped that way and no complaint is made of the car-load rate, it is not deemed material to enter into any finding of facts on this branch of the case.

The complainant shipped about one thousand of these chairs from its factory at Canton to various points in the United States during the year 1888. In the year 1889 it shipped from that factory to various points in the United States 1,850 of these chairs, and from its branch factory at Toronto 150.

In the Official Classification No. 6 adopted by the Joint

Committee of the Trunk Line Association, taking effect August 15, 1889, these surgical chairs are not mentioned by name, but under the rule of practice of the railroad, where any article is not specifically named in the classification, it is classed with what are construed to be analogous articles and take the same rate with them. According to this rule surgical chairs are construed to be analogous with "barber, dental or reclining chairs, boxed or crated," and with them, at owner's risk, are charged double-first-class rates in less than car-load quantities, and when in car-load quantities are charged second-class rates. The double-first-class rate is $1.26 for 100 pounds, and the second-class rate is 52 cents per 100 pounds from Canton to Boston and points taking Boston rate. From Canton to each of the following cities named in the table below the charges of the railroads for transporting one of these surgical chairs at less than car-load rates would be as follows:

From Canton to	Chicago	$1.67
"	Cleveland	.79
"	East St. Louis	1.94
"	Cincinnati	1.49
"	Baltimore	2.25
"	Philadelphia	2.30
"	New York	2.39
"	Boston	2.83
"	Pacific Coast points	4.00

Formerly surgical chairs were shipped at a first-class rate whether set up or knocked down, but now in less than car-loads they can only go at a double-first-class rate, owner's risk, whether set up or knocked down, or in any other way they may be packed. The chairs are not loaded directly into the car, but the railroad company has men to receive them and put them into its warehouse and they are handled at the receiving and delivering points by the servants of the railroad company.

The classification makes different rates on goods boxed and crated from those which are not boxed and crated.

Pianos, cabinet organs, side-boards, desks and sewing machines are usually shipped in less than car-load quantities; and upon the hearing, by way of comparison of rates, the complainant introduced evidence to show the space occupied in the cars and the freight rates charged by the defendant railroads for transporting these articles and the value, from which it appears that these were as follows:

Pianos, upright, 6 feet long, 2 feet 8 inches wide, and 5 feet 1 inch high, weight about 900 pounds; value about $400.

Pianos, square, 9 feet 1 inch long, 4 feet wide, and 1 foot 9 inches in depth; weight about 1,000 pounds, and value about $400.

Cabinet Organs, 4 feet 8 inches long, 2 feet 1 inch wide, and 4 feet 1 inch high; weight about 400 pounds, and value from $75 to $100.

Sideboards, 4 feet 8 inches long, 2 feet 6 inches wide, and 3 feet 6 inches high, without top, and with top 7 feet 6 inches; weight about 500 pounds, and value from about $35 to $100.

Desks, roller top, 4 feet long, 3 feet wide, and 4 feet high, weight about 240 pounds; value about $32.

Sewing Machines, 38 inches long, 19 inches wide, and 42 inches high, weight 117 pounds; value about $45.

By the terms of the classification referred to, pianos, organs and all musical instruments are required to be completely boxed for shipment, and if not boxed are not taken. Under this classification the articles mentioned in the above table are classified as follows:

Pianos, boxed, O. R., L. C. L., 1.
Cabinet Organs, O. R., L. C. L., 1.
Sideboards, crated and wrapped, L. C. L., 1.
Desks, crated and wrapped, L. C. L., 1½.
Sewing Machines, S. U., boxed or wrapped, O. R., released, L. C. L., 1.
Sewing Machines, entirely K. D., boxed or wrapped, O. R., released, L. C. L., 2.

It appeared from the evidence that barber chairs were worth from $40 to $150; reclining chairs about the same, and that the average price of dental chairs is from $150 to $175.

Evidence introduced by the complainant showed that rates on western roads on surgical chairs had been double-first-class, but that this had been recently reduced to first-class, and that on southern roads the rate was first-class. In reply to this the defendants introduced evidence which shows as a rule that first-class rates on western and southern roads are from 25 to 50 per cent. higher on freight generally than first-class rates on the roads in the Trunk Line territory, and in some instances higher than that.

The evidence further showed that the controlling conditions determined the classification of goods by the Official Classification Committee of the Trunk Line Association are:

1. Bulk and space occupied.
2. The weight of the package is compared with its dimensions.
3. The value of the goods.
4. The volume of the traffic.
5. And it would also be considered whether the goods can be loaded in a car so as to get a full car-load.

Under these rules the rate on a piano is lower than on a surgical chair, because the piano weighs more for the space occupied. The piano is therefore shipped as first-class freight and the surgical chair double-first-class, both at owner's risk, and higher at carrier's risk.

The chairman of the Official Classification Committee of the Trunk Line Association testified that the volume of the traffic in pianos, organs, roller-top desks, sideboards and sewing machines (articles the rate on which had been compared with that on complainant's chairs) is many times greater than the volume of traffic in surgical chairs, and that the quantity of an article shipped forms an important part in making up the classifications under which articles are shipped in less than car-loads as well as in car-loads. He further testified that it was computed that surgical chairs as crated would load 8,100 pounds in a car 30 feet or less in length, and that the same chair would load in a car 34 feet in length 9,900 pounds.

He further said that in his opinion 4,000 pounds more of desks and sideboards than of surgical chairs could be loaded in either size car, and 16,000 pounds more of pianos and organs.

As a general rule double-first-class freight is composed of light and bulky articles.

Thirty and thirty-four feet are the average standards of length of a common freight car. The cars now being constructed are of various sizes, running from 28 to 40 feet in length. A 34 foot car runs inside measurement 33 feet 4 inches in length by 8 feet in width, and 7 feet in height.

A comparison was made in the evidence between express charges on these surgical chairs and the charges made by the railroads. The table given above in a preceding part of this report, shows what the charges were to various cities named from Canton, Ohio, by the railroad; the following table shows what the express charges are on these surgical chairs from Canton to the same cities:

	Per 100 pounds.
From Canton to Boston	$1.75
" New York	1.75
" Philadelphia	1 75
" Baltimore	1.75
" Washington	1.75
" Chicago	1.75
" Indianapolis	1.75

It thus appears that the express companies make their charges without regard to distance. But it further appeared in the evidence that, as the express companies make no extra charge for receiving and delivering the freight, and also do not require the chairs to be boxed or crated, but transport them standing up, the expense of sending by express was less than of sending them by rail.

The evidence further shows that other freight can be piled in the car around surgical chairs, barber, dental and reclining chairs, pianos, sideboards, desks and sewing machines, and that goods in bales can be piled on crated surgical chairs without injury to either, and that heavier freight might be

piled on boxed pianos. There was no evidence as to how barber chairs, dental chairs and reclining chairs were in point of fact prepared for shipment; that is, whether they were crated or boxed, or partly knocked down, or in what manner they were prepared for shipment; or to what extent, if any, other freight could be piled upon them in the car. The only evidence that was offered upon the subject upon the hearing was the classification above referred to which described them as "barber, dental or reclining chairs, boxed or crated." The same classification requires sewing machines, sideboards, cupboards and desks to be crated.

The question presented by this proceeding is whether the rates charged in the transportation of surgical chairs are relatively too high, as compared with the rates for the carriage of other property with which these chairs as freight may in substantial respects be compared, as to bulk, value, expense of handling and of carriage. As to the rates upon these other articles, such as barber chairs, dental chairs and reclining chairs, or of the rates on pianos, cabinet organs, sideboards, desks and sewing machines, no question as to their reasonableness or justice has heen made before us. If the question was the mere price, defendant's charge for transporting these surgical chairs from Canton to any of the cities named in the evidence, without regard to the rates charged upon other articles from and to the same points and of other freight carried in the same car or train from which the carrier was deriving revenue, it would without any doubt be a very great service rendered for a very small price, and this would be more or less true of any service rendered by the railroad companies in the transportation of any particular kind of freight for any distance. But the business of a railway carrier is not made up of the transportation of one article only; it relates to the movement of a large and diversified traffic. It results therefore in this as in numerous other instances that a different standard of estimate may be safely consulted, such as that of other freight carried contemporaneously and a comparison of the charge made for other articles in which the same calculations as to value, bulk and expense of handling and of carriage would to a considerable

extent enter; and for the purposes of such comparison it is not indispensably necessary that the articles should be competitive with each other, though if they are competitive then this feature must more strongly bring to view the fact of discrimination in rates, if there be such.

Another view of this case that has been put prominently forward in the pleadings as well as in the evidence, requires notice. Rate-making and classification committees, although composed of experienced agents selected by the carriers, and in whose selection the other business interests of the country have no voice, perform a valuable and important service to the public as well as to the railroads, by the manner in which they intelligently adjust classifications and rates to the conditions of transportation, as a rule putting them in such shape that all can understand them. The Commission has never changed classifications and rates simply for the purpose of experiment, but has only changed them in occasional particulars when the statute and evidence have in our judgment shown that it was necessary to do so in order to reach a just and reasonable rate, or to correct what operated as an unjust discrimination.

The Commission has heretofore had occasion to frequently consider questions of classification of freight, and some of the rules, and in fact most of them, testified to by the witnesses in this case in regard to the controlling considerations in the making of classifications of freight, are such as have been recognized by the Commission. For example, that a reasonable, fair and just difference may be made in proportion to quantity hauled of the same article in a full car-load and in less than car-load lots, and the respective rates charged upon each according to weight, is a principle that has been often recognized by the Commission. That a rate maker may, and in fact should take into consideration, as shown by the evidence in this case, such controlling conditions, in preparing a classification, as bulk and space occupied, the weight of the article as compared with its dimensions, its value, whether it can be so loaded into a car as to make a full car-load, and whether as a matter of fact, it is

hauled in car-loads as well as in less than car-loads, are each and all true. But the mere fact that one article, for example, sewing machines, is shipped "in greater quantities" than surgical chairs, when each as a rule is shipped in less than car-load quantities, and of no large difference in bulk, weight and value, and of no appreciable difference in expense of handling and of haul, that this alone should constitute in itself any reason why the former should enjoy lower rates or classification than the latter, merely for the reason that they are shipped "in greater quantities," is a doctrine to which we cannot give our assent. In such a case mere quantity, not measured by a recognized unit of quantity adapted to carriage and lessening the expense of handling and carriage, cannot be allowed to affect rates in the transportation of property. The small dealer is entitled to just and reasonable rates on his product, as much so as many and large dealers, and any discrimination between them in rates based upon the idea that the one class of persons makes many shipments while the other makes but few is unjust and unreasonable under the provisions of the Act to regulate commerce. It is a discrimination in favor of one kind of traffic as against another in the vital matter of rates, and is unlawful.

The same doctrine found in occasional loose judicial dicta, to the effect that a carrier under such circumstances may make "concessions" in rates in favor of "a large as against a small quantity of freight," or of "a party" of a given number of persons, as against a "single person," upon the idea that there is "a wholesale and retail principle" involved in it, is a doctrine at war with the fundamental purpose of the Act to regulate commerce, which has for one of its main objects the protection of the weak as against the strong, and destroys the establishment of proportional equity and justice. These dicta, if given full effect, would undermine this fundamental purpose and give to combinations and schemes for securing advantages over single individuals a power that would shut out all small competition, and put the weak at the mercy of the strong at every turn where railway transportation became a matter of moment in business transactions.

The lower rate in proportion upon a car-load of freight,

treating a car-load as a unit, than upon the same articles in less than a car-load, does not come within any such principle as this, but is founded altogether upon different considerations. So also is the recognized principle that the longer the haul the lower the rate per ton per mile, although the aggregate rate is continually increasing, in consequence of which railway carriers can well afford to make through rates on very long hauls at charges less in proportion according to distance than local rates upon very short hauls. The proposition of lower rates according to "quantity" we are here discussing is very different from another with which it is some times confounded, namely, that a railroad company which has a very large volume of traffic, consisting of articles of different kinds, can well afford to make cheaper rates than one which has a small volume of traffic, for the reason that the cost of transportation is greatly reduced and the magnitude of its business and the revenue it receives thereon will justify such cheaper rates.

A difference is made by the Official Classification between articles boxed and those that are crated. All musical instruments must be boxed or they will not be taken, while it is sufficient if desks, sewing machines, surgical chairs and many other articles are crated. But it appears that pianos, cabinet organs, desks, sideboards and sewing machines, as a rule, are all shipped in less than car-load quantities, the same as surgical chairs, and when necessary that various articles are transported in the same car with each of these, and that bundles or packages of goods that are not of great weight, may be placed upon surgical chairs in the same manner as upon pianos, cabinet organs, desks and sewing machines.

The car-load rate of surgical chairs is second-class, or 52 cents per 100 pounds from Canton to Boston, but for all practical purposes it might as well not exist, because manufacturers of these articles never ship them in that way, and in the course of their business cannot do so. The reasonableness of this rate is not questioned, but the very great difference between it and the less than car-load rate is insisted upon by the complainant as a circumstance which shows that the latter is too high. This difference is great; it is a differ-

ence between 52 cents per 100 pounds and $1.26 per 100 pounds, or a difference of 74 cents per 100 pounds, on a shipment of one of these chairs from Canton to Boston. The same difference would relatively exist to other points not so far distant from Canton. A difference like this under the circumstances we consider is manifestly too large; it is so great as to be unusual.

No question has been made before us as to the reasonableness or justice of the classification upon barber, dental and reclining chairs, and no evidence was offered in this proceeding showing how they were prepared for shipment. We therefore express no opinion as to the classification or rates so far as they are concerned. We can well understand how they would be considered not the most remunerative freight that could be hauled by the railroad carriers, and this also is true of surgical chairs. And we fully appreciate the force of the views and suggestions made by the carriers in reference to their rates upon surgical chairs. But a carrier cannot and does not expect to receive equally remunerative rates from each of the different kinds of freight carried by it over its line. It is entitled to a fair, reasonable and just rate upon each of these, and what is such fair, reasonable and just rate depends upon a variety of considerations.

We confine ourselves to the particular article before us in this proceeding. According to its condition, size and weight it cannot be said to be light and bulky when crated for shipment. There is of course a small amount of dead space connected with it, but this is frequently true of many kinds of freight. While these surgical chairs are not the heaviest freight, nor the most compact according to dimensions, yet they are far more so than many other kinds of freight. They are greatly more heavy and compact according to space occupied than reclining chairs, and it is difficult to conceive how reclining chairs could have the backs folded forward over the chair and crated in such manner as to occupy so little space and at the same time furnish so much weight according to space as these surgical chairs. They are also much heavier than the average barber and dental chairs.

After careful consideration of all the evidence in this case,

we have reached the conclusion, and so find as a matter of fact, that first-class, or a rate of 63 cents per 100 pounds from Canton to Boston, would be a reasonable rate on these surgical chairs when partly knocked down and shipped at owner's risk, crated, in less than car-load quantities; that if shipped at carrier's risk, when so crated, a first-class and one-half rate, or 94 cents per 100 pounds, would be just and reasonable between these points; and that the same classification adapted to other and shorter distances in the Trunk Line Classification territory reached by these carriers, making the rates proportionately lower where the distances are shorter than from Canton to Boston, or higher where they are longer, would be just and reasonable.

An order will be entered in conformity with the conclusions and opinion of the Commission in this proceeding.

GEORGE RICE, PETITIONER, *v.* THE ATCHISON, TOPEKA & SANTA FE RAILROAD COMPANY, THE ATLANTIC & PACIFIC RAILROAD COMPANY, THE ALABAMA GREAT SOUTHERN RAILROAD COMPANY, THE ALABAMA & VICKSBURG RAILWAY COMPANY, THE CENTRAL PACIFIC RAILROAD COMPANY, THE CINCINNATI, NEW ORLEANS & TEXAS PACIFIC RAILWAY COMPANY, THE ILLINOIS CENTRAL RAILROAD COMPANY, THE INTERNATIONAL & GREAT NORTHERN RAILROAD COMPANY, THE LOUISVILLE, NEW ORLEANS & TEXAS RAILWAY COMPANY, THE MOBILE & OHIO RAILROAD COMPANY, THE NEWPORT NEWS & MISSISSIPPI VALLEY COMPANY, THE NEW ORLEANS & NORTH-EASTERN RAILROAD COMPANY, THE SOUTHERN PACIFIC COMPANY, THE ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, THE TEXAS & PACIFIC RAILWAY COMPANY, AND THE UNION PACIFIC RAILWAY COMPANY, DEFENDANTS.

Complaint filed July 22, 1889.—Order notifying railroad companies supposed to have an interest in the question involved of the pendency of this proceeding and granting leave to them to intervene or be heard, issued August 14th, 1889.—Answers of defendants and intervenors filed August 12 to September 18, 1889.—Hearing of testimony had at Washington, December 12, 1889.—Brief for complainant filed February 28, 1890.—Leave to submit additional evidence granted April 23, 1890.—Additional evidence taken by deposition filed May 12, 1890.—Hearing of oral argument had May 13, 1890.—Briefs and arguments for defendants filed March 25 to June 2, 1890.—Decided October 27, 1890.

1. Competition as a factor in making rates:

a. The competition between all-water lines and the all-rail lines in the carriage of petroleum and its products from the Port of New York to San Francisco, Oakland, Sacramento, Stockton, Marysville, San Jose and San Diego, in the State of California, is actual and involves the transportation of traffic important in amount.

b. The competition between the part-rail and part-water lines, and the part-pipe lines and the part-water lines, on the one side, from the oil fields of Pennsylvania and Ohio, *via* the Port of New York to San Francisco, Oakland, Sacramento, Stockton, Marysville, San Jose, San Diego and Los Angeles, in California, in the carriage of petroleum and its products, on the one hand, and the competition of the all-rail lines on the other, in the carriage of the same kinds of property from and to the same points named, is a competition that is actual and involves the transportation of traffic important in amount.

Held, on these facts and upon the authority of numerous decisions cited in this opinion, a dissimilarity of circumstances and conditions is thus shown to exist at the California points named as compared to the circumstances and conditions which exist in the carriage of this traffic by the all-rail lines at intermediate points along such all-rail lines, and that it is such a dissimilarity of circumstances and conditions as is recognized by the Act to regulate commerce and warrants the all-rail lines in making such just and reasonable rates as will enable them to meet the low rates and competition of the competing all-water lines and of the competing part water and part rail lines at said California points above named, and that in doing so the said all-rail lines are not obliged to make their rates at intermediate points along their lines as low as the rates forced upon them by the competition at said California points above named, viz.: San Francisco, Oakland, Sacramento, Stockton, Marysville, San Jose, Los Angeles and San Diego.

2. The "blanket-rate," as it is called, by which the same rate is charged by the all-rail lines from the City of New York, and from all points in the oil producing regions in the States of Pennsylvania, Ohio and West Virginia, and from all the territory in the United States east of the 97th meridian of longitude, in the carriage of petroleum and its products to San Francisco, Oakland, Sacramento, Stockton, Marysville, San Jose, Los Angeles and San Diego, in the State of California, is a rate that has its origin in and is based upon actual competition for the carriage of this large traffic, on the one side, by the all-rail lines, and on the other side, by the lines part rail and part water, and also, in some instances, all-water lines, and also in other instances, part-pipe lines and part-water lines; and it is a rate of which petitioner has no right to complain as being a violation of the fourth section of the Act to regulate commerce, because it does not appear from the evidence that it is a violation of that section.

3. The other issue upon which this case was tried, namely, that an unlawful preference was shown to the Standard Oil Trust and the companies, firms and associations affiliated to the said Standard Oil Trust by the all-rail carriers in making low rates for them and for their benefit to certain California points where there were receiving tank stations

erected by the said Standard Oil Trust and its affiliated companies, firms and associations, and then by shipment afterwards from said receiving tank stations to adjacent localities on low rates made for short local hauls in California, whereby an unlawful preference was shown to said Trust and its affiliated firms, companies and associations, is not sustained by the evidence in this proceeding.

4. No question is presented in this case as to whether the rates charged by the all-rail carriers at intermediate points are just and reasonable or not, but, on the contrary, the case was so presented and tried as to distinctly indicate to the Commission that no decision was desired in regard to this matter, for no evidence was offered concerning it by either side; and the case being one that is *inter partes* commenced, prosecuted and defended by able counsel for the respective parties, the Commission has heard, considered and determined it as presented by the parties and their counsel.

5. It appears that the Southern Pacific Company and the Atchison, Topeka & Santa Fe Railroad Company each has several stations on their lines at which no publication is made in their tariffs of the rates at these stations; and this they admit; and the Commission finds that this conduct on their part has been owing to a misapprehension and misconstruction of the law and in accordance with a usage and practice long existing among railroads; the Commission therefore orders them to make publication of the rates they charge at these stations in their tariffs; and in all other respects, as to these defendants and the Union Pacific Railway Company, the petition in this proceeding stands dismissed.

6. As to the other rail-carrier defendants in this proceeding, which are certain southern and southwestern railroads, it appears in a general way that there is water competition at Memphis, Vicksburg, New Orleans, Mobile and Galveston, but upon this point the evidence is not sufficiently clear to enable the Commission to determine the extent to which this competition at each of these points is actual and whether it involves traffic important in amount; and the Commission therefore retains the case as to these defendants, and will hereafter notify the parties as to the time when and the place where all such further evidence will be heard upon these points that the parties may desire to offer.

Franklin B. Gowen, *William A. Day* and *William P. Montague*, for complainant.

Britton & Gray, for A. T. & S. F. R. R. Co., A. & P. R. R. Co. and C. S. F. & C. R'y Co.

Edward Colston and *George Hoadley*, for C., N. O. & T. P. R'y Co. and associated lines.

Charles H. Tweed, James C. Martin and *W. D. Guthrie*, for So. Pac. Co., Cent. Pac. R. R. Co. and N. N. & M. V. Co.

John S. Blair, for I. & G. T. R. R. Co., St. L., I. M. & S. R'y Co., T. & P. R'y Co. and U. P. R'y Co.

Holmes Cummins, for N. N. & M. V. Co. and L. N. O. &. T. R'y Co.

E. L. Russell, for M. & O. R. R. Co.

W. C. Goudy, for C. & N. W. R'y Co.

REPORT AND OPINION OF THE COMMISSION.

BRAGG, *Commissioner:*

The complaint of George Rice, a refiner of petroleum and its products at Marietta, Ohio, sets forth that the Standard Oil Trust, and a large number of other refiners and shippers of petroleum and its products affiliated with said Trust, control about ninety per cent. of the entire petroleum refining business of the United States and are large shippers of petroleum and its products as interstate commerce over the various railroad lines of the respondents, who are common carriers of interstate commerce and subject to the Act to regulate commerce.

That said shippers of petroleum and its products affiliated to the said Trust and the said Trust itself are and have been for a long time favored in rates and facilities by the respondents, and by means thereof have been and still are able to exclude the complainant from fair and open competition in the various markets reached by the lines of the respondents.

That one of the methods of said unjust and illegal discrimination consists in naming comparatively a low rate to various important central and junction points where said favored shippers have large receiving and shipping tank stations at which they can receive petroleum and its products over the lines of the respondents and re-ship the same over the said lines to intermediate and other final points of delivery at much less rates for the entire service than are charged petitioner for shipments of similar products from the points of origin on said lines direct to such points of final delivery without the intervention of re-shipping.

The complainant sets forth certain rates alleged to be prevailing respectively upon the several lines of the defendants which are alleged to be as follows:

A. ON TRANSCONTINENTAL LINES.

V. On the line formed by the Union Pacific Railway and the Central Pacific Railroad, from Omaha to San Francisco, the rates on petroleum and its products are as follows: From Omaha to Sacramento and San Francisco (nineteen hundred and twenty miles), and other Pacific coast terminal points, ninety cents per one hundred pounds, which is the same as the rate from New York city to San Francisco (thirty-three hundred and twelve miles), *via* the lines of the said two companies; while the rate on the same products from Omaha to Ogden, Utah Territory (ten hundred and thirty-four miles), and to all points west of Ogden, except the terminal points aforesaid, is one dollar and ninety-five cents per one hundred pounds, and the rates from Omaha westward to Ogden are progressive so as to reach the point of one dollar and ninety-five cents per one hundred pounds at Ogden as aforesaid.

VI. On the two lines formed, first, by the Atchison, Topeka & Santa Fe Railroad and the Atlantic & Pacific Railroad, and second, by the Atchison, Topeka & Santa Fe Railroad and the lines of the Southern Pacific Company, from Kansas City, Missouri, to the Pacific coast, the rates on petroleum and its products are as follows:

From Kansas City to Los Angeles, San Francisco, Sacramento and other terminal points, ninety cents per one hundred pounds; while the rates on the same products from Kansas City to Las Vegas in New Mexico, and to all points westward of Las Vegas, except the said terminal points, are one dollar and ninety-five cents per one hundred pounds; while between Kansas City and Las Vegas the rate is a progressive one, reaching one dollar and ninety-five cents at Las Vegas aforesaid.

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The complaint charges:

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2. That said rates give an undue and unreasonable prefer-

ence and advantage to the shippers affiliated to the Standard Oil Trust over complainant, and subject the latter to an unreasonable prejudice and disadvantage as compared with the former.

3. That by said rates the several respondents charge and receive a greater compensation in the aggregate for the transportation of petroleum and its products under substantially similar circumstances and conditions for a shorter than for a longer distance over the same line in the same direction, the said shorter distance being included within the longer distance.

So much of the complaint as is against the southern and southwestern roads, and their answers thereto, are omitted for reasons which will be hereinafter stated.

The defendants filed answer denying that any of them give any preference in rates to the Standard Oil Trust or shippers affiliated to the said Trust in the matters complained of in the complaint.

The respondents also deny that the rates established and charged by them are unjust and unreasonable, or that said rates give an undue and unreasonable preference and advantage over complainant to shippers affiliated to the Standard Oil Trust or to any shippers, and subject complainant to an unreasonable prejudice and disadvantage; or that by said rates they charge and receive a greater compensation in the aggregate for the transportation of petrolenm and its products under substantially similar circumstances and conditions for a shorter than for a longer distance, over the same line in the same direction, the shorter distance being included within the longer distance. They aver in substance that where the greater charge is made for a shorter than for a longer distance over the same line in the same direction, the former being included in the latter, the circumstances and conditions attending the transportation are substantially dissimilar by reason of water or other actual competition of controlling force in respect to traffic important in amount.

As to the rates set forth in the complaint the Union Pacific Railway Company admits that it is and has been since May 23, 1889, a party with other common carriers in a rate of 90

cents per hundred pounds on petroleum and its products in car-load lots from New York city to San Francisco and other Pacific coast terminals; and that its rate on said commodities is and has been since said day the same from Omaha to said Pacific coast terminals. It denies that its rate from Omaha to Ogden or any point east of Ogden, or to any point on the Central Pacific Railroad between Ogden and San Francisco, on said commodities in car-load lots is as high as $1.95 per hundred pounds, and alleges that while the rates from Omaha westward to Ogden are progressive and this progression continues to Kelton and Reno, the rate to Ogden is, and was at the time of the filing of the complaint, $1.25 per hundred pounds in car-load lots, and to the latter points $1.75; and that from Reno the rate decreases until at Sacramento, a Pacific coast terminal, the 90-cent rate is in force.

The Southern Pacific Company, answering for itself and the Central Pacific Railroad Company (of which it is the lessee), admits that over the line of the Union Pacific Railway and said Central Pacific Railroad the rate on petroleum and its products from Omaha to Sacramento, San Francisco and other Pacific coast terminals, namely, Marysville, San Jose, Oakland, Los Angeles, Stockton and San Diego is and was at the filing of the complaint, 90 cents per hundred pounds in car-loads, and that the rate is the same from New York city to said terminals. It alleges that it is not a common carrier between Omaha and Ogden, Utah Territory, but that it is informed and believes that the rate between said points on said commodities is $1.25 per hundred pounds. It denies that the rate from Omaha to all the points on its line of road west of Ogden is $1.95 per hundred pounds, and avers that the rates are progressive from Omaha westward, and reach a maximum of $1.75 at Lake Station, Utah Territory, which rate applies as far west as Prosser Creek, Cal., and that to points west of Prosser Creek and east of Sacramento the rates are found by adding to the through rate to Sacramento (90 cents per hundred pounds) the local rate back from Sacramento until the sum of the said rates reaches said maximum rate of $1.75 per hundred pounds. It admits that over the line of the said Atchison, Topeka & Santa Fe Rail-

road and the Atlantic & Pacific Railroad and the lines operated by it, namely, its own line and that of the Central Pacific Railroad, the rate is 90 cents per hundred pounds in car-loads from Kansas City, Missouri, to San Francisco, Sacramento, Marysville, Stockton, Oakland, San Jose and San Diego, California, but denies that the rate from Kansas City to any point on the line of road operated by it between Mojave, California, (the point of its junction with the Atlantic & Pacific Railroad) and any of said California points is in excess of $1.75 per hundred pounds. It avers that said last-named rate is not greater than the through rate of 90 cents per hundred pounds from Kansas City, Missouri, to Stockton, California, plus its local rate from Stockton to final destination. That the sum of said rates ranges from 96¾ cents from Kansas City to Lathrop, California, to $1.72¾ per hundred pounds from Mojave to Goshen, California; that in no case is the total car-load rate from Kansas City to any point on its road between Goshen and Mojave in excess of $1.75 per hundred pounds.

At the hearing the following statement was made to the Commission by Hon. Franklin B. Gowen, then counsel for petitioner, in regard to these cases:

"This case raises but one point, 'the long and short haul,' but in accordance with the recent practice of the Commission we have taken the liberty of embracing a great number of defendants. The charge against each is a violation of the 'long and short haul' clause; we have set forth in our petition the mileages and the rates. . . . Now the point we make in all these cases is that at all stations where there are these low rates for long distances as against the rates for short distances there are receiving tank stations at which oil for the large wholesale dealers is received at the low rates and shipped backward or forward over the line at local rates greatly to the advantage of the large shipper as distinguished from the small dealer who has no such facilities given him."

In the brief of the present counsel for complainant it is

stated that this case "has relation more particularly to violations of section four of the Act to regulate commerce."

After the statement made by Mr. Gowen at the hearing, that the case raised but one point, "the long and short haul clause," it was tried upon that issue.

This case was heard at the same time with several others under an agreement that the evidence taken should be applicable to each case so far as pertinent and relevant. The only issue made in this case was that the defendants were guilty of violating the "long and short haul" clause of section four of the Act to regulate commerce. Upon the issue thus made the evidence was taken in this case, and only so much will be considered and stated as relates to this issue.

Taking the case of the transcontinental lines, that of the Union Pacific Railway and the Central Pacific Railroad, from Omaha to San Francisco; and the two lines formed, first, by the Atchison, Topeka & Santa Fe Railroad and the Atlantic & Pacific Railroad, and second, by the Atchison, Topeka & Santa Fe Railroad and the lines of the Southern Pacific Company from Kansas City to the Pacific coast, the material facts are found to be, in substance, as follows:

The rates in question are through rates on petroleum and its products in car-load lots from points east of the 97th meridian of longitude to Pacific coast terminals and intermediate points between the Missouri river and the Pacific coast. This rate has its origin in and is based upon actual competition in regard to traffic important in amount, between the all-rail lines on the one side, and, on the other, the all-water lines and also lines part rail and part water, and also lines part pipe and part water. This is true of this rate on each of the trans-continental lines named in this opinion and report. From New York to San Francisco and other Pacific coast terminals this rate is and has been since May 23, 1889, 90 cents per hundred pounds; and the rate from all intermediate points between New York and Pacific coast terminals is the same. The rate from Omaha to Ogden over the Union Pacific Railway is $1.25 per hundred pounds. At points between Ogden and Lake Station the rate increases progressively according to distance, and is made up of the local rate

of the Union Pacific Railway from Omaha to Ogden, to which is added the local rate of the Central Pacific Railroad from Ogden westward to Lake Station. When Lake Station is reached this total rate thus made is $1.75 per hundred pounds, and this rate continues at all stations on the Central Pacific Railroad between Lake Station up to and including Prosser Creek. From Prosser Creek west the rate decreases until at Sacramento, which is a Pacific coast terminal, it is 90 cents per hundred pounds. The rate to Prosser Creek equals the west bound through rate from Omaha to Sacramento plus the east bound rate from Sacramento to Prosser Creek. The rates at all points between Prosser Creek and Sacramento are made by adding to the west bound through rate from Omaha to Sacramento the east bound rate from Sacramento to the station to which the shipment is made of these articles from eastern points.

Over the line formed by the Atchison, Topeka & Santa Fe Railroad and the Atlantic & Pacific Railroad and the lines operated by the Southern Pacific Company, namely, its own line and that of the Central Pacific Railroad, the rate on petroleum and its products is 90 cents per hundred pounds in car-load lots from Kansas City, Missouri, to San Francisco, Sacramento, Marysville, Stockton, Oakland, Los Angeles, San Jose and San Diego, California. On that portion of this line operated by the Southern Pacific Company the highest rate is $1.75 per hundred pounds between Mojave, California (which is the junction point of the Atchison, Topeka & Santa Fe and the Atlantic & Pacific Railroad Companies), and Goshen, California. This higher rate is also made by adding the west bound through rate to the Pacific Coast terminal to the east bound rate from that terminal to the intermediate station to which the freight is destined.

On the two lines formed, first, by the Atchison, Topeka & Santa Fe Railroad Company and the Atlantic & Pacific Railroad Company, and second, by the Atchison, Topeka & Santa Fe Railroad Company and the lines of the Southern Pacific Company, from Kansas City to Los Angeles, San Francisco, Sacramento and other terminals, the rates on petroleum and

its products in car-load lots are 90 cents per hundred pounds. From Kansas City to Las Vegas, New Mexico, the rate is progressive according to distance, and at Las Vegas it is $1.95 per hundred pounds. From Las Vegas west it is $1.95 per hundred pounds to all stations on the Atchison, Topeka & Santa Fe and the Atlantic & Pacific Railroads except the terminals aforesaid.

In the year 1870 no petroleum oil or its products were carried to the Pacific Coast country by rail. As late as 1878 nearly all the oil shipments were carried by water. But after that time rail carriers by degrees began to obtain more of it, and finally, as numerous transcontinental lines were constructed, acquired the greater share of the carriage of these articles. The carriage by water, however, is still large.

The largest shippers of oil by water to the Pacific coast country from eastern points appear to be the Standard Oil Company and Dearbon & Company and Sutton & Company of New York. During the year from September 1, 1888, to August 31, 1889, the Standard Oil Company shipped to California 9,177,808 gallons of oil. Of this amount 2,191,103 gallons were shipped by water, and 6,986,705 gallons were shipped by rail. In the year 1888 Sutton & Company, of New York, shipped by water to California points 800 barrels and 111,000 cases of oil. The same firm during the year 1889 and up to November of that year shipped by water to California points 3,050 barrels and 214,811 cases of oil. During the year 1888 Dearbon & Company shipped from New York to California points by water 575 barrels and 27,000 cases of oil. The same firm during the year 1889 and up to November of that year shipped from New York to California points by water 1,335 barrels and 90,850 cases of oil.

The rates on these shipments by water lines during the year 1888 to California points from New York were as follows:

BARRELS.

Highest rate	62½ cts. per 100 lbs.
Lowest rate	50 " "

CASES.

Highest rate..... 56½ cts. per 100 lbs.
Lowest rate..... 43¾ " "

In 1889 the rates on shipments of oil by water lines from New York to California points were as follows:

BARRELS.

Highest rate..... 81¼ cts. per 100 lbs.
Lowest rate..... 62½ " "

CASES.

Highest rate..... 75 cts. per 100 lbs.
Lowest rate..... 43¾ " "

These rates fluctuated greatly and frequently, often in the same day.

In making the above rates the barrel is assumed to weigh 400 pounds, though they weigh on an average from 410 to 420 pounds. Cases of oil weigh from 82 to 84½ pounds per case. The average time of a sailing vessel from New York to San Francisco around Cape Horn is a little over four months, sometimes as long as six months. The principal water line competitors for this business are the clipper ships around Cape Horn and the Pacific Mail Steamship Company. The most of the shipments of oil to California points, whether made by rail or water, are in cases and not in barrels or in tanks.

Much the larger proportion of oil shipped by rail to California points is shipped in box cars in cases. From September 1, 1888, to August 31, 1889, the Standard Oil Company shipped to California points by rail 6,986,705 gallons of petroleum and its products as follows:

In box cars containing cases..... 5,256,800 gallons
" " " " barrels 145,259 "
In upright tank cars..... 1,429,133 "
In longituninal tank cars..... 155,513 "

So of these total shipments by rail 17¼ per cent. were carried in tank cars, 3½ per cent. in barrels and 79¼ per cent. in cases.

The complainant sets forth certain rates alleged to be prevailing respectively upon the several lines of the defendants which are alleged to be as follows:

A. ON TRANSCONTINENTAL LINES.

V. On the line formed by the Union Pacific Railway and the Central Pacific Railroad, from Omaha to San Francisco, the rates on petroleum and its products are as follows: From Omaha to Sacramento and San Francisco (nineteen hundred and twenty miles), and other Pacific coast terminal points, ninety cents per one hundred pounds, which is the same as the rate from New York city to San Francisco (thirty-three hundred and twelve miles), *via* the lines of the said two companies; while the rate on the same products from Omaha to Ogden, Utah Territory (ten hundred and thirty-four miles), and to all points west of Ogden, except the terminal points aforesaid, is one dollar and ninety-five cents per one hundred pounds, and the rates from Omaha westward to Ogden are progressive so as to reach the point of one dollar and ninety-five cents per one hundred pounds at Ogden as aforesaid.

VI. On the two lines formed, first, by the Atchison, Topeka & Santa Fe Railroad and the Atlantic & Pacific Railroad, and second, by the Atchison, Topeka & Santa Fe Railroad and the lines of the Southern Pacific Company, from Kansas City, Missouri, to the Pacific coast, the rates on petroleum and its products are as follows:

From Kansas City to Los Angeles, San Francisco, Sacramento and other terminal points, ninety cents per one hundred pounds; while the rates on the same products from Kansas City to Las Vegas in New Mexico, and to all points westward of Las Vegas, except the said terminal points, are one dollar and ninety-five cents per one hundred pounds; while between Kansas City and Las Vegas the rate is a progressive one, reaching one dollar and ninety-five cents at Las Vegas aforesaid.

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The complaint charges:

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2. That said rates give an undue and unreasonable prefer-

ence and advantage to the shippers affiliated to the Standard Oil Trust over complainant, and subject the latter to an unreasonable prejudice and disadvantage as compared with the former.

3. That by said rates the several respondents charge and receive a greater compensation in the aggregate for the transportation of petroleum and its products under substantially similar circumstances and conditions for a shorter than for a longer distance over the same line in the same direction, the said shorter distance being included within the longer distance.

So much of the complaint as is against the southern and southwestern roads, and their answers thereto, are omitted for reasons which will be hereinafter stated.

The defendants filed answer denying that any of them give any preference in rates to the Standard Oil Trust or shippers affiliated to the said Trust in the matters complained of in the complaint.

The respondents also deny that the rates established and charged by them are unjust and unreasonable, or that said rates give an undue and unreasonable preference and advantage over complainant to shippers affiliated to the Standard Oil Trust or to any shippers, and subject complainant to an unreasonable prejudice and disadvantage; or that by said rates they charge and receive a greater compensation in the aggregate for the transportation of petrolenm and its products under substantially similar circumstances and conditions for a shorter than for a longer distance, over the same line in the same direction, the shorter distance being included within the longer distance. They aver in substance that where the greater charge is made for a shorter than for a longer distance over the same line in the same direction, the former being included in the latter, the circumstances and conditions attending the transportation are substantially dissimilar by reason of water or other actual competition of controlling force in respect to traffic important in amount.

As to the rates set forth in the complaint the Union Pacific Railway Company admits that it is and has been since May 23, 1889, a party with other common carriers in a rate of 90

mission finds, while in a general way there is evidence that petroleum and its products are carried by water lines to Mobile, New Orleans, Galveston, Vicksburg and Memphis, and that the rail carriers make their rates lower at these points than at intermediate stations, to meet, as they allege, water competition, yet the evidence does not show with sufficient distinctness what amount of petroleum and its products are carried by water lines to these points and at what rates, to enable the Commission to determine the force of this competition and whether it is such as to be actual and important in amount. And therefore the Commission will enter upon no findings of fact and statements of facts and conclusions in these cases at present, but will dispose of them in the future as hereinafter indicated in this report and opinion.

The conclusions and opinion of the Commission upon the foregoing facts found will now be stated as to the case of the transcontinental lines. However it may be as to other traffic, it is clearly established by the evidence in this proceeding that as to petroleum and its products, on shipment from New York to San Francisco and other California water terminals, the competition of water lines is actual and important in amount. The rates of the water lines are much lower than the rates of the rail lines. The water lines are not subject to the provisions of the Act to regulate commerce. They make whatever rates they choose. They are under no obligation to publish these rates or to make them known in any manner to the public. The commodity thus transported is one whose use is so general that it may be said to be almost universal in the United States, and the force of the competition and transportation by which rates are greatly cheapened cannot be ignored. The rail carriers meet the rates of the water lines for this business by making rates considerably higher, but, at the same time, low enough to enable them to share to a large extent in the carriage of this property. In doing this the rail carriers make rates which are shown to be remunerative to them, though not so much so as rates on some other kinds of freight. But they do not reduce their rates correspondingly at intermediate stations. The complaint is

that the "long and short-haul" clause of the fourth section of the Act to regulate commerce is violated in making the lower rate to San Francisco and other Pacific coast terminals reached by the water lines. But in this respect the complaint is not sustained. *Re* Louisville & Nashville Railroad Company, 1 I. C. C. Rep. 31; Harwell and others *v.* Columbus & Western Railroad Company and Western Railway of Alabama, 1 I. C. C. Rep. 236; New Orleans Cotton Exchange *v.* Illinois Central Railroad Company, 3 I. C. C. Rep. 534; W. S. King & Company *v.* New York, New Haven & Hartford Railroad Company, in manuscript.

With reference to this traffic the city of Los Angeles occupies a different position to that of the water terminals named. It appears that this city receives petroleum and its products important in amount by the water lines to San Francisco or San Diego, as the case may be, and which is afterwards brought down the coast by the rail lines of the Southern Pacific Company, or the Atchison, Topeka and Santa Fe Railroad Company as the case may be, to Los Angeles. It does not appear whether it is brought to Los Angeles on through bills of lading or only on bills of lading from San Francisco or San Diego, as the case may be, and afterwards on a separate bill to Los Angeles, but this is not important, as in either event the practical result would be the same. It may be brought to Los Angeles each way.

If it is a separate carriage by a water line to San Francisco or San Diego and no farther, then the rate that is thus made for its carriage is one that is not subject to the regulation provided by the Act to regulate commerce, and if from San Francisco or San Diego, as the case may be, it is a separate carriage by a rail carrier to Los Angeles, then it is a service beginning and ending in the State of California, and as such not subject to the regulation provided by the Act to regulate commerce. The dealer in these products at Los Angeles has a right to demand that the rail carrier shall take these articles brought by the water lines to San Francisco or San Diego, as the case may be, and bring them to him at Los Angeles at reasonable rates, and these rates might be reasonable and be less in amount than the difference, for example, between the amount

of the water rate to San Francisco or San Diego and the amount of the all-rail rates to these points. Such a state of facts creates a substantial dissimilarity of circumstances and conditions in reference to the transportation of this traffic to Los Angeles that prevents the lower all-rail rate to that city upon these products from being a violation of section four of the Act to regulate commerce. These circumstances and conditions are strongly competitive, and on one side they are subject to the regulation provided by the Act to regulate commerce, while on the other they are not. They fairly warrant the all-rail carriers, who are subject to the Act to regulate commerce, in making such just and reasonable rates on this traffic as will enable them to meet at Los Angeles the rates of carriers not subject to the Act to regulate commerce, even though in doing so they charge lower rates than at intermediate stations where no such circumstances and conditions exist.

On the other hand, if this traffic is brought from New York, for example, by water lines to San Francisco or San Diego, and from the one or the other of these two last-named seaports, as the case may be, to Los Angeles, under a through bill of lading, then it is manifest upon the evidence in this proceeding that it would be so brought from New York to Los Angeles at as low, if not a lower, rate than the all-rail rate from points east of the 97th meridian of longitude to Los Angeles; and being, as we have already seen, important in amount, would also be in actual competition with the all-rail rate, so that the rail carriers would be justified in meeting it by the all-rail rate.

Another point made in the complaint and at the hearing was, that in all these cases, at all stations where there are lower rates for long distances as against higher rates for short distances, there are receiving tank stations at which oil for large wholesale dealers is received at the low rate, and shipped over the line backward and forward at local rates greatly to the advantage of the large shipper as distinguished from the small dealer who has no such facilities given him. But in the case of these transcontinental lines this averment was not sustained by the evidence to any material extent. It was true the evidence showed that low rates were made

to the terminals; it was also true that the evidence showed that at these terminals there were receiving tanks built and provided by shippers and owners of oil and not by the railroad companies; but it further appeared that no shipments whatever were made from San Francisco of these oils to adjacent points; and that from Sacremento, Stockton, Marysville, Oakland, San Jose and Los Angeles shipments in iron barrels were made to adjacent points not exceeding 4.8 per cent. of the oil received.

As part of the evidence showing the rates at intermediate stations between Prosser Creek and Sacramento, and between Las Vegas and Stockton and others similarly situated, and as such unavoidably involved in the complaint and defense, it further appeared that the published tariffs did not anywhere show the rates charged at these points, but that these rates were made by a combination of the rate to the terminals and the local rate from the terminal back to the station of destination added together, upon a rule well known among railroad men as being "the lowest combination." These were not published on these tariffs, nor on any other tariffs, so as to show the actual rates at these intermediate stations, where the higher rates prevailed.

The ground assigned by the rail carriers for not publishing these rates, and for arriving at them in the manner here shown, appeared to be that they desired to put them in such shape as not to violate the "long and short haul" clause of the Act to regulate commerce. But that method of publishing the rates does not avoid a violation of that section of the statute, if such violation actually exists. The published rate should describe the charge just as it is made for the service rendered, and the tariff should show it. It was also said by the carriers that the rates to San Francisco had to be frequently changed and published as often as changed to meet the fluctuations that are often occurring, and that if the rail carrier had to change and publish the change of its rates to a long line of intermediate points in the interior, every time it was compelled to do so at San Francisco, that this would entail upon it a great deal of useless expense, putting its busi-

ness more largely at the mercy of the ocean carriers, and forcing its business at these intermediate stations into a condition of constant confusion to shippers and consignees. But the facts in evidence do not sustain this theory of the defendants. It does not appear that there are frequent fluctuations in oil rates at San Francisco and the Pacific coast terminals which affect the all-rail rates, necessitating frequent changes in them by publication at San Francisco. On the contrary, it appears that the all-rail rates stand at 90 cents per hundred pounds during a long season, when shipments are heavy, and that for the balance of the season, when shipments are light, they stand at $1.25 per hundred pounds.

These carriers have what they call their east and west bound tariffs. Petroleum and its products are carried to these intermediate stations as west bound freight, and the rates upon them should appear in the west bound tariffs of these carriers. As a rule carriers throughout the country have what they call east and west bound or north and south bound tariffs. The tariffs of the carrier, whether east or west bound, or north or south bound, should plainly show the actual rates it charges at every station, so that the shipper or consignee may see them and understand them for himself. Ambiguities such as involve the computation of the through rate on freight to the terminal on one tariff, and then hunting up another tariff and finding the rate on that tariff back from the terminal to the intermediate station, and adding the two together in order to arrive at the actual rates charged to the intermediate station, is a kind of skilled work that the Act to regulate commerce never intended should be devolved upon shippers or consignees of freight. Freight agents, large shippers, or dealers and some of their clerks, and railroad commissioners are, of course, familiar with such puzzles and mysteries, but the Act to regulate commerce contemplates and requires that all the rates of a rail carrier subject to its provisions shall be plainly printed in the tariff under which the freight is carried, so that the shipper, consignee or any other person having occasion to examine them may see and understand what they are. A violation of the statute in so vital a matter as the publication of rates charged at stations, when

plainly admitted by the evidence without any conflict, as is done in this proceeding, we feel it to be our bounden duty to correct.

The "blanket rate," as it is called, that is, the same rate on oil from all points east of the 97th meridian of longitude or Missouri river points on transcontinental shipments, is not one that is prejudicial to complainant. It is a general rate embracing all the oil-producing territory, and the general effect and operation of it is to equalize and cheapen the rate on petroleum and its products to producers as well as consumers. It is a rate made with reference to very long hauls of an article that will not bear high rates of freight and yield any margin of profit to the producer, and at the same time, as we have already stated, is one of very general use. Each rail carrier engaged in the carriage receives of course its percentage or proportion of the aggregate rail rate. It is not claimed that this aggregate rail rate is unjust or unreasonable. It is a through rate agreed upon by the railroad carriers who take part in the carriage of this traffic. That it has its origin in the competition existing for this traffic between the all-water lines, and also the water and rail lines, and also the pipe and water lines on the one side, and the all-rail lines on the other, is manifest. It is a competition that is perfectly natural and legitimate and in the interest of the public as well as that of the carriers engaged in it. It is equally true that it relates to traffic important in amount. The manner in which the competition arises is very plain and simple. One rail carrier from the oil-producing region in Pennsylvania, Ohio or West Virginia has a terminal at New York, Philadelphia or Baltimore, as the case may be. So this carrier takes the oil to its seaport, having all the haul to itself, and there the water carrier in large part takes the oil to California points. Or a pipe line takes the crude oil to one of these seaports and there it is refined, and from thence the water carrier in large part takes it to California points. But other rail carriers penetrating the oil-producing region have no outlets at Atlantic ports; their lines run west, so they form all-rail-line connections to California and compete for this business. To meet the competiton of the all-water lines,

and of the part-rail and part-water lines, they make this "blanket rate."

No question is presented in this proceeding as to the reasonableness or unreasonableness of rates at intermediate points between Omaha and Kansas City on the one hand, and, on the other, California points such as Sacramento, Stockton, Marysville, San Francisco, Oakland, San Jose, Los Angeles and San Diego. The question presented under the "long and short haul" clause is whether these carriers were justified by substantially dissimilar circumstances and conditions in making a lower charge to these California points named than to intermediate points, and having admitted as they did that they made the lower charge to these California points for the longer haul, as they alleged, because they were forced to do so by circumstances and conditions that were substantially dissimilar to those existing at the intermediate points, the burden of proof was then upon them to show by evidence the existence of such substantially dissimilar circumstances and conditions. This they have done. A further question is presented as to re-shipments of oil from receiving tanks at these California points, and this we have decided.

But neither the complainant nor any other shipper or consignee has made any complaint or offered any evidence in this proceeding that the rates at these intermediate points are unjust or unreasonable. The complainant in his evidence admits that he has never attempted nor desired to ship any of his product to any of these intermediate points. This is a proceeding *inter partes*, commenced, prosecuted and defended by very able counsel on both sides, and we have heard, considered and determined the case upon the issues and evidence presented by them. Whether the rates at these intermediate points are in any respects unjust and unreasonable involves questions upon which the carriers are entitled to a hearing and to an opportunity to put in evidence, and whether investigated by the Commission upon the complaint of a shipper or consignee, or of its own motion, will also involve the taking of a great deal of evidence and the entering upon an extensive field of various considerations.

The Commission is unable, for reasons already stated, to arrive at any satisfactory conclusion as to how far, if at all, there is actual competition between rail and water carriers at points like Memphis, Vicksburg, New Orleans, Mobile and Galveston, in the carriage of petroleum and its products, to an extent that is important in amount. In consequence of this, these cases will have to stand open for further evidence upon these points as will hereafter be directed by the Commission.

The order of the Commission is that the Southern Pacific Company, the Atchinson, Topeka & Santa Fe Railroad Company and the Atlantic & Pacific Railroad Company must publish in their tariffs the rates actually charged by them on shipments of petroleum and its products at all intermediate points as well as terminals on their lines as indicated in this opinion, and that this must be done by the 29th day of November, 1890.

The order of the Commission further is that as to all other matters involved in these complaints, the said complaint is hereby dismissed as to the Southern Pacific Company, the Central Pacific Railroad Company, the Union Pacific Railway Company and the Atchison, Topeka & Santa Fe Railroad Company.

The order of the Commission further is that this case is retained as to all the southern and south western railroads now parties to the complaint; and that as to them the case is re-opened for all such further evidence as any of the parties to this proceeding may desire to offer as to the amounts of petroleum and its products actually carried by the water lines and at what rates to Memphis, Vicksburg, New Orleans, Mobile, Galveston and any other points on their lines at which they make lower rates than to intermediate points on account of the competition of water lines; and the Commission will hereafter direct the time and place that such evidence will be heard by the Commission and the arguments of counsel thereon.

Commissioner MORRISON:

It is proven that oil in considerable quantities is carried by water routes from New York to the Pacific coast. This I think shows dissimilar circumstances which justify some lower rail rate to Pacific coast terminal points than may reasonably be charged on oil from New York to some intermediate or shorter-distance points on the same lines of road.

W. S. KING & COMPANY, COMPLAINANTS, v. THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY AND THE NEW YORK & NEW ENGLAND RAILROAD COMPANY, DEFENDANTS.

Complaint filed October 10, 1889.—Answers filed October 29 and 30, 1889.—Argument for Complainants filed February 18, 1890.—Heard May 21, 1890.—Brief for defendants filed May 21, 1890.—Decided October 30, 1890.

1. A line of steamships plying between New York and Boston every other day makes the distance in twenty-four hours, does the largest part of the carrying trade of the grocers of Boston on shipments from New York, carries flour from New York to Boston for 8½ cents per hundred pounds; other lines, part water and part rail, known as the "Sound lines," make daily trips between New York and Boston and carry flour from New York to Boston at 9 cents per hundred pounds; an all-rail line composed of the lines of the defendants upon through billing and through rates to Boston alone on shipments from New York makes daily runs between these points and carries flour from New York to Boston at 9 cents per hundred pounds; each and all of these carriers are in actual competition for this business, and it involves the carriage of traffic important in amount.

Held, upon the facts, that this is a case in which the circumstances and conditions in the carriage of this commodity are substantially dissimilar at Boston to what they are at Readville, an interior town about eight miles from Boston, on the line of the all-rail carriers, where no competition exists between the all-rail carriers and the water lines, and justifies the all-rail carriers in meeting the rate by the water line at Boston by charging 9 cents per hundred pounds on flour, while the combined local rates of the two rail-carriers are higher upon shipments of this kind of freight from New York to Readville than they are upon the joint through rate from New York to Boston.

2. The all-rail line is composed of two separate and distinct lines of railroad, owned by two separate and distinct corporations; but by an

arrangement these two corporations make joint through rates on all business from and to New York and Boston passing over their lines, and for this business they furnish fast freight trains which stop at no stations between New York and Boston and have the right of way over all other freight trains; as to all other points along their lines, however, they each charge their local rates, and this business is done by way freight trains of each company respectively for itself and on its own account; all of which methods and rates in each instance are duly advertised in their published tariffs.

3. On the facts herein above stated, a firm of dealers in the city of Boston ordered a consignment of flour from New York to Readville by the all-rail lines of the defendants in this proceeding, and subsequently claimed in their complaint to the Commission that they should have been charged for this service the through rate to Boston and not the local rates of the defendants from New York to Readville.

Held, that the facts show that complainants are mistaken as to their rights in this matter and that the complaint cannot be sustained, and must be dismissed without prejudice.

4. According to the evidence, the cost of service is far less expensive to the carrier in doing the through business than in doing separately, each for itself, the combined local business of the two railroad companies. It does not appear that the through rate to Boston is unreasonably low; nor does it appear upon the evidence in this proceeding that the local rates of these two railroad companies are unjust and unreasonable.

5. The joint through rate to Boston on flour is one that is forced upon the all-rail carriers by the competition of a water line not subject to the Act to regulate commerce, and is a rate, low as it is, in which there is a small margin of profit to the all-rail carriers, while the combined local rates to Readville, although considerably higher, relate to a service that is wholly different in all its material features, methods and aspects, rendered by the carriers under circumstances and conditions that are substantially dissimilar.

6. The evidence fails to sustain the allegation of the complaint that complainants formerly shipped to Readville from New York over the roads of the defendants at Boston rates.

W. S. King, for complainants.
R. M. Saltonstall, for N. Y., N. H. & H. R. R. Co.
Charles A. Prince, for N. Y. & N. E. R. R. Co.

REPORT AND OPINION OF THE COMMISSION.

BRAGG, *Commissioner:*

The complaint in this proceeding avers that the complainants are flour dealers at 115 State Street, Boston.

That the defendants are common carriers, and, under a common control, management or arrangement for continuous carriage and shipment, are engaged in the transportation of passengers and property wholly by railroad between New York City, in the State of New York, and Boston, in the State of Massachusetts, and as such common carriers are subject to the Act to regulate commerce.

That the defendants on September 11th, 1889, charged complainants as freight on flour from pier 50, New York City, their regular all-rail terminal, to Readville, Mass., on the line of the New York & New England Railroad and on a haul shorter than to Boston, 18 cents per 100 pounds; whereas their published tariff rate all rail from pier 50, New York City, over the same roads to Boston is but 9 cents per 100 pounds, being the rate complainants have paid for several years and are now paying to Boston.

That complainants formerly shipped to Readville over the same roads at the Boston rate, and, it being a shorter haul than to Boston over the same lines, they aver that it is an unjust discrimination, and pray relief.

The answer of the New York, New Haven & Hartford Railroad Company avers that it has no knowledge or information sufficient to form a belief as to the truth of the allegation in the first paragraph of the complaint, namely, that complainants are flour dealers at 115 State Street, Boston.

It admits that defendants are common carriers under a common control, management or arrangement for continuous carriage or shipment, and engaged in the transportation of passengers and property wholly by rail between New York City in the State of New York, and Boston, in the State of Massachusetts, and as such common carriers are subject to the Act to regulate commerce.

It admits that the defendants' tariff rate on flour between New York City and Boston is 9 cents per 100 pounds.

It denies that the complainants were charged 18 cents per 100 pounds on a shipment of flour from New York to Readville by this defendant on the 11th of September, 1889; and it further denies that the complainants formerly shipped flour to Readville from New York over the same roads at Boston rates.

And the defendant further avers that the circumstances and conditions under which the defendants transport flour between New York City and Boston are substantially dissimilar to the circumstances and conditions under which they transport flour between New York and Readville.

That between New York and Boston the all-rail line of the defendants is subject to competition with a carrier wholly by water not subject to the provisions of the Act to regulate commerce, and by other carriers partly by rail and partly by water, known as the "Sound Lines," whose rates between New York and Boston are on flour 9 cents or less per hundred pounds, which rates it is necessary for the defendants to meet.

That the defendants at the time mentioned in the complaint had no joint tariff rate between New York City and Readville, and the flour mentioned in the complaint is billed by this defendant at 9 cents per hundred pounds from New York City to Willimantic, the last station on defendant's line in the direction of Readville, and there delivered to the New York and New England Railroad Company.

Wherefore defendant prays that as to it the petition in this proceeding may be dismissed.

The answer of the New York & New England Railroad Company avers that the respondents are not under a common control, management or arrangement for a continuous carriage or shipment of freight between New York City, in the State of New York, and Boston, in the State of Massachusetts.

That the property in this case was not transported wholly by rail, but was transported by water, from Pier 50, East River, New York, to Harlem River.

That it admits that on September 11, 1889, the tariff rate for the transportation of flour in car-load lots from Pier 50, East River, New York, to Boston was 9 cents per hundred pounds, by special joint tariff agreed upon by the respondent companies, but says there is no joint tariff rate for the transportation of flour between Pier 50, East River, New York City, and Readville, Mass.; that the local rate in force on the line of the respondent on flour in car-load lots between Willimantic, Conn., and Readville, Mass., on said date was 9 cents per 100 pounds.

That New York and Boston are both seaports, with regular lines of steamers plying between them, and that an enormous amount of freight is carried by water between the two cities. This competition compels the railroad companies to transport freight between the two cities at rates but little in excess of the actual cost of doing the work, and the margin of profit is so small that if the same rates were applied to all business they would be unable to meet their fixed charges, and therefore would be unable to continue the operation of the road.

That no such special competition exists at Readville, Mass., which is an inland point not affected by water competition.

That this difference in the circumstances and conditions between Boston and Readville, respectively, constitutes a substantial dissimilarity, and as freight transported between New York and Readville, on the one hand, and New York and Boston, on the other, is not transported under substantially similar circumstances and conditions, such business, therefore, does not come within the provisions of section four of the Interstate Commerce Act.

That the respondent has not the power to make a through rate between New York City and Readville without the consent of the New York, New Haven & Hartford, and no agreement has been made by the respondent with said New York, New Haven and Hartford Railroad Company for a through rate between New York City and Readville.

That in the absence of said through rate the respondent company cannot lawfully do otherwise than charge for the transportation of flour in car-load lots from Willimantic to Readville its regular published tariff rate of 9 cents per hun-

dred pounds, which rate has been duly published and posted in its depots and filed with the Interstate Commerce Commission as required by law.

That the said rate of 9 cents per hundred pounds is a just and reasonable rate, not higher than the New York & New England Railroad Company charges for the transportation of the same class of freight over the same distance upon any other portion of its road in any and all cases in which the rate is received as a local rate, and not as a proportion of a through rate established by an agreement with connecting lines

There is a general denial of all the allegations in the petitioner's complaint not already admitted or denied.

From the course taken at the hearing of this proceeding it may be assumed as one of the material facts found that on the 11th day of September, 1889, the defendant charged the complainants 18 cents per hundred pounds for a shipment of flour all-rail from New York City to Readville, in the State of Massachusetts. At the same time they had a through rate on shipments of flour from New York to Boston, as shown by their published tariffs, of 9 cents per hundred pounds.

The defendants used the same tariffs of rates as the Sound line, which are made up according to the Trunk Line Classification, but with this difference, that by what is known as the "Norwich Line," which carries freight from New York to Boston in connection with the New York & New England Railroad Company, Readville, and perhaps other stations along the line of the New York & New England Railroad by this route, is given the benefit of through rates, and the evidence shows that Readville by this route receives the same rate on flour shipped from New York that Boston does, namely, 9 cents per hundred pounds. There are three other of these Sound lines of steamers, known as the "Fall River Line," the "Stonington Line," and the "Providence Line," and these are operated in connection with the Old Colony Railroad in the carriage of freight and passengers from New York to Boston. The line of the Old Colony Railroad passes by Readville, but it is not shown by the evidence at what rates

freight is carried by the three Sound lines which connect with this railroad from New York to Boston and Readville, but, presumably, as the Norwich Line and its connection, the New York & New England Railroad Company, make a rate of 9 cents from New York to Readville on flour, it is likely that the other three Sound lines and the Old Colony Railroad make the same rate on flour from New York to Readville. By all these Sound lines the rate on flour from New York to Boston is 9 cents per 100 pounds.

All of these Sound lines are daily lines between the cities of New York and Boston.

There is also a regular line of steamers, all water, known as the "Metropolitan Line," running between New York and Boston. Steamers of this line leave said cities every other day, and make the distance in 24 hours. There are six steamers regularly employed on this line, four of which have a tonnage of over 2,600 tons each, and two of which about 1,800 tons each; another new steamer has just been built for this line. It appears that instead of making trips every other day the Metropolitan Line, with seven steamers, now contemplates a schedule of having a daily line from New York to Boston.

By the Metropolitan Line the rate on flour from New York to Boston is 8½ cents per 100 pounds.

There is a strong competition between the defendants, the Sound lines and the Metropolitan Line, for the carriage of freight between the cities of New York and Boston. The evidence tends strongly to show that this competition is most active between the Metropolitan Line on the one hand and the Sound lines and the defendants on the other. The Metropolitan Line does the largest part of the carrying trade of the grocers in Boston. In fact the evidence shows that this line has the whole grocery trade of Boston, and that there are fifty-eight wholesale grocery establishments in the city of Boston. This line does a very heavy business, and it carries flour in large quantities from New York to Boston.

Readville is a small suburban station within the limits of the town of Hyde Park, about eight miles distant from the city of Boston. Its population is chiefly composed of resi-

dents who have their daily occupation in Boston. It is an inland town. Freight to it in car-load quantities is not carried as a rule, because it has no freight depot. If freight is carried to it in less than car-load quantities, it is unloaded by the trainmen. A great portion of the freight to Readville is brought out from Boston in wagons. The population of Readville is not more than four or five hundred persons.

No through rate is made by the defendants from New York to Readville. On freight from New York to Readville they charge their combined locals. That is, the New York, New Haven & Hartford Railroad charges, say, on flour, its local rate to Willimantic, the end of its line, a distance of one hundred and thirty miles, and then the New York & New England Railroad charges its local from Willimantic to Readville, a distance of about 78 miles. The distance from New York to Boston *via* the route of the defendants is about 216 miles—that is, the New York, New Haven & Hartford extends from New York to Willimantic, a distance of 130 miles, and the New York & New England extends from Willimantic to Boston, a distance of 86 miles.

The defendant carriers for the carriage of through freight from New York to Boston have fast trains which make no stops at local stations for the delivery of freight between New York and Boston. These freight trains are run through on rapid time, making close connections. For the transaction of the local business along their lines they have local trains which stop at the local stations and receive and deliver freight in parcels usually, though sometimes in car-loads, from and to these local stations. They find it necessary to run these fast freight trains between New York and Boston in their competition with the Sound lines, but more especially on account of their competition with the Metropolitan Line.

The expense of operating these fast freight lines is greatly less than that of operating their local freight trains, but to what exact extent is not shown by the evidence. However, it does appear that the number of men required for the handling of the through trains and through freight is considerably less than for the handling of the local trains and local freight, to say nothing of the other expenses. Freight

transported on a through train is in car-load lots and in large quantities, and the bulk is not broken between New York and Boston.

The Metropolitan Line does not reach Readville. All of the Sound lines reach Readville by their connecting railroads, the New York & New England and the Old Colony Railroad.

The evidence in this proceeding shows that for the last five or six years, at least, the rate from New York to Readville on flour has never been the same over the line of the defendants as it has been to Boston, nor does it show that this rate was ever the same between New York and Readville as between New York and Boston, though as to the last five or six years it is positive to the effect that it has not been the same between these points. The evidence is equally clear that on the 11th day of September, 1889, as well as at all times since then and now, complainants could have shipped their flour from New York to Readville *via* the Norwich Line and the New York & New England Railroad Company at 9 cents per 100 pounds.

The evidence distinctly shows that the New York, New Haven & Hartford Railroad Company and the New York & New England Railroad Company are separate and distinct corporations, under no common control whatever, owning their property separately, each for itself, and each being managed separately by its own corporate officers, and that they are under no common management, but that they do have an arrangement between them for the continuous carriage of freight and the transportation of passengers between the cities of New York and Boston at through rates.

The course of business by which freight is shipped over the lines of the defendants at through rates from New York to Boston is this: The freight is received at Pier 50, East River, New York, and loaded into cars there, and then taken from there by transfer boat up to a place called Harlem River, about four or five miles, and is then forwarded by rail to Willimantic.

The principal question in this case is whether the charge made by the defendants of 18 cents per 100 pounds for the

carriage of a consignment of flour from New York to Readville, Mass., on the 11th day of September, 1889, was an unjust discrimination against the plaintiffs, arising from the fact that for a haul of the same kind of property over their lines from New York to Boston, Mass., a distance of eight miles farther than to Readville, the defendants charge only 9 cents per 100 pounds.

The complaint does not aver that the rate thus charged to Readville is one that is unjust and unreasonable in itself, but alleges that it is an unjust discrimination by virtue of the less charge for the longer haul of the same kind of property over the same lines in the same direction to Boston.

There is no averment in the complaint that the service rendered in the longer haul is done under "substantially similar circumstances and conditions" with the service rendered in the short haul, which are substantial words of qualifying import found in the fourth section of the Act to regulate commerce. But the complaint, though framed by a person who was evidently intelligent, is not prepared with that technical precision which would indicate that it was done by counsel. No objection was made to it at the hearing on account of the omission of these words, obviously, as we supposed, for the reason that it was manifest that the complainants meant in their complaint the averment involved in these words, or that the Commission would even then have permitted the amendment by inserting them if application had been made. We therefore treat the complaint as though these words were in it. We have referred to this feature of the complaint because one of the controlling considerations in every such case must be whether "the circumstances and conditions are substantially similar" in the performance of each service. The statute has made this so.

The Commission has repeatedly held that where the competition of an independent water line, not subject to the provisions of the Act to regulate commerce, is actual with that of a rail carrier for traffic at a point reached by it, and for traffic important in amount, that then the rail carrier if necessary to meet such competition may lower its rates at

that point without doing so at other points on its line at which no such competition exists and at which other points the rail carrier could not so reduce its rates without a large loss of revenue. See *Re* Louisville & Nashville Railroad Company, 1 I. C. C. Rep. 31; Harwell and others *v.* Columbus & Western Railway Company and others, 1 I. C. C. Rep. 236; Business Men's Association of the State of Minnesota *v.* Chicago, St. Paul, Minneapolis & Omaha Railway Company, 2 I. C. C. Rep. 52; New Orleans Cotton Exchange *v.* Illinois Central Railroad Company and others, 3 I. C. C. Rep. 535.

A full discussion of the rule and the grounds upon which it rests will be found in these decisions, and it is unnecessary to repeat it at length here. The principle found running through them all is that the statute in express terms having provided that the circumstances and conditions must be substantially similar in the performance of each service, in the longer as in the shorter haul, that the existence of such competition as that above stated at one point between a carrier subject to the law, and one that is not subject to the law, creates at that point circumstances and conditions which are substantially dissimilar, in the service performed by the rail carrier, to those existing at other points on its line where no such competition exists. That in such a case the rail carrier is not obliged to go out of the business at a point where such competition with an independent water line prevails, leaving to the water line a monopoly of that business; nor is the rail carrier, on the other hand, compelled to lower its rates at other points along its line, where no such competition is found, to the standard of the rate it is compelled to make to meet the competition of the water line at the point where such competition does exist; but the rail carrier may lower its rates at the point at which it has to encounter such competition and in lowering them may make such just and reasonable rates in view of all the circumstances and conditions surrounding its business as will enable it to meet the competition of the independent water line at that point.

Applying these principles to the facts of this case it is evident that the competition between the defendants and the Metropolitan Line at Boston comes within this rule; and the

traffic carried by the defendants from New York to Readville does not come within it. It is clearly established that the joint through rate on flour from New York to Boston is such a rate as the defendants are compelled to make to meet the competition of the Metropolitan Line. They have no such through rates from New York to Readville. The making or not making of through rates on the part of connecting rail carriers is entirely a matter of agreement between them, in which they consult their own business interests, and under the Act to regulate commerce the Interstate Commerce Commission has no power to compel them to make through rates. See Little Rock & Memphis Railroad Company *v.* East Tennessee, Virginia & Georgia Railway Company, 3 I. C. C. Rep. 1.

Upon the issues and evidence in this proceeding there is no basis upon which to institute any just and fair comparison between these through and local rates; nor is any such comparison necessary in order to determine any material question involved in this case. Any consideration of the reasonableness and justice of the local rates must be made from a standpoint that is entirely different from that of the joint through rates. It is not apparent that the arrangement for the joint through rates from Boston and New York, respectively, over these lines, results in burdening the local traffic of these rail carriers with higher rates, but, on the contrary, it is perfectly clear that the volume of business that is added to what neither of these carriers could otherwise do, in the absence of these joint through rates from New York to Boston, enables them to make the local rates considerably lower than they otherwise would be. As to these local rates there are observations regarding them that naturally suggest themselves here, and would in any other proceeding in which their reasonableness or justice was involved, and upon evidence like that presented in this case. These local rates are made for way trains that run slow, stop generally at every station, delivering and taking on freight chiefly in parcels, not loaded or unloaded by the shippers or consignees, but loaded and unloaded by the servants of the company. They, of course, carry freight occasionally in car-loads to local

points. These local trains are held over along the line as a matter of common occurrence to give the right of way to passenger and fast freight trains. These are each very short roads, and it is one of the usual features of transportation service by rail that the cost of that service in moving and handling local traffic by way trains is generally largely greater according to distance on short than upon long roads. In the present case it is manifest that it is a service that is very much more expensive to the carriers than the operation of the fast freight trains which make no stops at intermediate stations between New York and Boston and carry freight entirely in car-loads and in bulk. For all the purposes of this case, the causes for a large difference in amount between these through and combined local rates are shown by the evidence to reasonably and fairly exist; and under the circumstances and conditions detailed by the evidence the difference between them is not shown to be so large as to be unlawful. But in connection with all else that has been said regarding these local rates, the feature of them that is most controlling, so far as the present proceeding is concerned, is that as to each railroad it is a separate service rendered by the railroad and charged for accordingly, and is therefore a wholly different service and governed by different rules and considerations from those that apply to the joint through rates from New York to Boston.

An averment is made in the petition, which is sworn to, that complainants "formerly shipped to Readville over the same roads at Boston rates." The sworn answers of the defendants deny this was ever done. The burden of proof was thus upon the complainants to sustain this averment by evidence. The only evidence upon this subject is that of the witnesses examined by the defendants in support of their denial. These witnesses testify that nothing of the kind has occurred within the last five years, and their evidence tends strongly to show that no such rate, as an open rate, has ever existed. If such rate at any time has existed within the last five years, it must upon this evidence have been a concession in the shape of a secret rate, of which the witnesses have no

knowledge; and there is no evidence that it existed even in that form.

The defendants charged the complainants only their published rate for this shipment. If complainants had ordered their flour to be billed and shipped by way of the Norwich Line of Sound steamers and the New York & New England Railroad, it would have reached Readville at the same rate as the Boston rate, namely 9 cents per 100 pounds.

It results from the conclusions stated that this complaint must be and the same is hereby dismissed without prejudice.

S. C. CAPEHART AND JASPER SMITH, OWNERS OF THE STEAMER R. T. COLES, COMPLAINANTS, *v.* THE LOUISVILLE & NASHVILLE RAILROAD COMPANY, THE MEMPHIS & CHARLESTON RAILROAD COMPANY, THE EAST TENNESSEE, VIRGINIA & GEORGIA RAILROAD COMPANY AND THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY COMPANY, DEFENDANTS.

Petition filed October 30, 1889.—Demurrers filed November 18–25, 1889. Amended petition filed December 16, 1889.—Answers filed January 2–7, 1890.—Heard June 18, 1890.—Brief for complainants filed June 18, 1890.—Decided November 3, 1890.

1. Several rail carriers engaged in interstate commerce each cross or touch a navigable river leaving a large space of territory along and near the river and between their lines that can be served only by steamboats, and in connection with steamboats these rail carriers carry freight to and receive it from this territory at points where they touch or cross the river respectively, but as to it they make through rates with only one line of steamboats and refuse to make such through rates with other steamboats on the river.

Held, that under the law the rail carriers may do this, and that it is not unjust discrimination nor unlawful preference. Citing Napier *v.* The Glasgow & Southwestern Railway Company, 1 Railway & Canal Cases, 292.

2. In such a case all that a steamboat has a right to demand, with which the rail carriers have refused to make through rates and to do through billing, is that the rail carriers shall receive from and deliver to such steamboat freight for transportation at their published local tariff rates.

3. Through rates and through billing are matters of agreement among carriers engaged in interstate commerce, and, as was decided in the case of The Little Rock & Memphis Railroad Company *v.* The East Tennessee, Virginia & Georgia Railroad Company, 3 I. C. C. Rep. 1, the Commission has no power under the statute to compel them against their consent to enter into arrangements for through rates and for through billing.

4. An aggregate through rate is itself an entirety, although made up of agreed percentages, proportions or divisions, as the case may be, of the entire rate among the several carriers; and where the rail carrier makes a through rate from a point on a navigable river with a steamboat line, and refuses to make such through rate with another steamboat, the Commission cannot compel the rail carrier to receive freight from or deliver it to the steamboat, with which it has refused to make a through rate and to do through billing, upon the prepayment of charges for an estimated proportion of the through rate equal in amount to that which the rail carrier receives from the steamboat line with which it has an arrangement for through rates and through billing.

5. Where a carrier not subject to the Act to regulate commerce, for example, a steamboat plying the Tennessee river between Decatur, Alabama and Bridgeport, in the same State, has applied to rail carriers engaged in interstate commerce for through rates and through billing of freight and has been refused these, and during a period of several years has paid these rail carriers their local published tariff rates on freight, and now sues to recover the difference between the amount so paid on the local rates and the proportion of the through rate between the same points covered by the local rates.

Held, that no recovery can be had in such a proceeding before the Interstate Commerce Commission, and the complaint is dismissed without prejudice.

6. The common carriers named and referred to in the last clause of section 3 of the Act to regulate commerce are such alone as are subject to the provisions of that statute.

S. H. Gruber, for complainants.
East & Fogg, for N. C. & St. L. R'y Co.
W. M. Baxter, for M. & C. R. R. Co.
W. M. Baxter and *Hoadly, Lauterbach & Johnson*, for E. T., V. & G. R. R. Co.
Edward Baxter, for L. & N. R. R. Co.

REPORT AND OPINION OF THE COMMISSION

BRAGG, *Commissioner:*

The original complaint in this case was preferred by and in the name of "The Steamer R. T. Coles" and was verified by the oath of S. C. Capehart as master and managing owner. The defendants interposed a demurrer to the effect that the

steamer itself was not a proper party complainant under the provisions of the Act to regulate commerce. Complainant thereupon asked and obtained leave (without a decision upon the question raised by the demurrer) to amend the petition, and subsequently filed an amended petition in which said S. C. Capehart and Jasper Smith, as owners of the vessel, appeared as complainants. The parties defendant to the original petition were the Nashville, Chattanooga & St. Louis Railway Company, the Memphis & Charleston Railroad Company and the Louisville & Nashville Railroad Company; and in the amended petition a new defendant was added, namely, the East Tennessee, Virginia & Georgia Railway Company.

The facts in the case are conceded, not only to a large extent by the pleadings, but upon the hearing there was no disagreement as to the real situation. The steamer R. T. Coles, which is owned by the complainants, forms one of the lines of transportation upon the Tennessee river, and the defendants are railroads having, each of them, stations at different points along the river. These several lines of railroad are each engaged in interstate traffic and admit that they are subject to the provisions of the Act to regulate commerce. Among the other water carriers upon the river is a company known as the Tennessee River Transportation Company, and this company forms a line in direct competition with the line formed by the steamer owned by the complainants. The substantial grievance alleged by the complainants is that the defendant railroad companies discriminate in favor of the Tennessee River Transportation Company in that they take the business of that company at a cheaper rate than the business of the complainants. It appears that an agreement exists between the several defendants and the said Tennessee River Transportation Company by which joint through rates are in effect, applicable only to the business of that company, and said railroads interchange freight transported upon through bills of lading with said Tennessee River Transportation Company's line of steamers or barges at a lower rate by the railroads than is charged to the complainants, with whom no such arrangement for freight rates exists.

The complainants specify several instances of alleged discrimination against them, growing out of this condition of affairs. One or more of such transactions are given as to each of the defendant railroad companies in the transportation of property passing in both directions over the route formed by the steamer Coles and the several lines of defendants, respectively.

That a joint through rate is given to the Tennessee River Transportation Company by the defendants which is less on through business than is given to complainants by combined local rates was conceded at the hearing, and the tariff sheets showing the local rates (the latter being charged to the complainants) were submitted. It appears that the real trouble is that under the arrangement the Tennessee River Transportation Company constitutes with the defendants part of a through line, while the steamer R. T. Coles is not part of any such through line with the defendants, and upon freight carried by this steamer each of the defendants charges its local rates of freight to and from its station on the Tennessee river.

The following tables will show these through and local rates in effect December 10, 1889, and at the time when this complaint was filed:

EAST TENNESSEE, VIRGINIA & GEORGIA RAILWAY,
Memphis and Charleston Division.

Local rates between Memphis, Tenn., and Decatur, Ala.

CLASSES.												
1	2	3	4	5	6	A	B	C	D	E	H	F
50	43	36	30	24	20	15	17	14	12	23	28	29

Through rates from Memphis, Tenn., to Tennessee river landings between Decatur and Bridgeport, Ala., *via* Decatur, Ala.

CLASSES.												
1	2	3	4	5	6	A	B	C	D	E	H	F
69	56	50	44	37	31	31	31	31	22½	37	44	62

Rates on cotton from Tennessee river landings, between

Decatur and Bridgeport, Ala., to Memphis—$1.50 per bale.

LOUISVILLE & NASHVILLE RAILROAD.

Local rates between Nashville, Tenn., and Decatur, Ala.

	CLASSES.												
1	2	3	4	5	6	A	B	C	D	E	H	F	
40	35	30	25	21	17	13	15	12	10	20	25	25	

Through rates from Nashville to Tennessee river landings between Decatur and Bridgeport, Ala., *via* Decatur, Ala.

	CLASSES.												
1	2	3	4	5	6	A	B	C	D	E	H	F	
55	45	40	35	30	25	25	25	25	18	30	35	50	

NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY.

Local rates between Nashville, Tenn., and Bridgeport, Ala.

	CLASSES.												
1	2	3	4	5	6	A	B	C	D	E	H	F	
50	45	40	35	33	30	30	30	15½	14	30	30	28	

Through rates from Nashville, Tenn., to landings on the Tennessee river between Decatur, Ala., and Bridgeport, Ala., *via* Bridgeport, Ala.

	CLASSES.												
1	2	3	4	5	6	A	B	C	D	E	H	F	
55	45	40	35	30	25	25	25	25	18	30	35	50	

The above rates are in cents per hundred pounds, except class F, which is in cents per barrel. The local rates shown above apply in both directions. The through rates read from Nashville and Memphis to Tennessee river landings, and there are no rates on file reading from these landings, except the rate on cotton to Memphis shown above. It seems, however, to be the plain result of the evidence adduced on the trial, that if the same class of traffic should be shipped from these landings the rates would apply in both directions.

On business originating on the river and brought to the railroads by the Tennessee Transportation Company the rail carriers receive as their proportion considerably less than their local rates from Decatur or Bridgeport, as the case may be. On the freight originating upon the railroads and carried by them to Bridgeport or Decatur, as the case may be, for delivery to the Tennessee Transportation Company, that water line receives considerably less than its local rates. These proportions, as divided between the carriers, from the evidence appear to be as follows:

Table showing rates in effect December 10, 1889, from Nashville and Memphis to Tennessee River landings between Bridgeport and Decatur, divided by allowing transfer and boat the arbitraries shown in Memphis & Charleston R. R. division sheet of February 3, 1888.

LOUISVILLE & NASHVILLE RAILROAD.

From Nashville *via* Decatur:

Classes—	1	2	3	4	5	6	A	B	C	D	E	H	F
L. & N. R. R.	30	20	15	16	11	06	06	06	06	04	11	11	12
Transfer	05	05	05	04	04	04	04	04	04	04	04	04	08
Boat	20	20	20	15	15	15	15	15	15	10	15	20	30
Total	55	45	40	35	30	25	25	25	25	18	30	35	50

NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY.

From Nashville *via* Bridgeport:

Classes—	1	2	3	4	5	6	A	B	C	D	E	H	F
N. C. & St. L. Ry	30	20	15	16	11	06	06	06	06	04	11	11	12
Transfer	05	05	05	04	04	04	04	04	04	04	04	04	08
Boat	20	20	20	15	15	15	15	15	15	10	15	20	30
Total	55	45	40	35	30	25	25	25	25	18	30	35	50

MEMPHIS & CHARLESTON RAILROAD.

From Memphis *via* Decatur:

Classes—	1	2	3	4	5	6	A	B	C	D	E	H	F
M. & C. R. R.	44	31	25	25	18	12	12	12	12	08½	18	20	24
Transfer	05	05	05	04	04	04	04	04	04	04	04	04	08
Boat	20	20	20	15	15	15	15	15	15	10	15	20	30
Total	69	56	50	44	37	31	31	31	31	22½	37	44	62

Under the pleadings and the conceded facts two questions are presented for the consideration of the Commission:

First: Has the Commission, under the Act to regulate commerce, the power to compel the defendant railroads to give to complainants the same through route and rates of freight which they accord to their rival, the Tennessee River Transportation Company?

Second: Shall the Commission enter an award in favor of complainants as to past transactions between the parties growing out of the facts stated, in which it is claimed that the complainants have sustained losses by reason of the discriminations practiced by the defendants?

The Commission has heretofore had occasion to pass upon the question of its power to compel carriers to make through routes and rates. The question was presented in the case of The Little Rock & Memphis Railroad Company *v.* East Tennessee, Virginia & Georgia Railway Company and another, 3 I. C. C. Rep. 1. After an elaborate consideration of the question whether the Commission could compel a rail carrier to form a through route and make through rates with a connecting line against its consent, the Commission decided that it had no power to do so under the Act to regulate commerce. The grounds upon which the Commission arrived at that conclusion will be found discussed and stated in that proceeding. We have since that time repeatedly followed the rule laid down in that case.

A case very much like the present on its facts, the statute under which it arose and the questions presented, was that of Napier *v.* The Glasgow & Southwestern Railway Company, 1 Railway & Canal Cases, 292. In that case the railway extended from Glasgow to Androssan, and made through rates for the carriage of freight and passengers from points on its line to Belfast, Ireland. That portion of the carriage from Androssan to Belfast was by the water lines. The proportion of the through rate from Glasgow to Androssan was considerably less than the local rate charged by the rail carrier between these two points.

There had been a previous arrangement existing between Napier and the Railway Company by which the latter had made through rates with his vessel plying between Andros-

san and Belfast. The carriage of freight and passengers by this arrangement was broken off by the railway company; and then the railway company made a similar arrangement with the owners of another vessel plying between Androssan and Belfast.

Napier then filed a petition, substantially similar to that in this proceeding, under the second section of the Railway and Canal Traffic Act of England of 1854. That section, in its leading and controlling provisions, is very similar to the first clause of the third section of the Act to regulate commerce; in fact, the latter may be said to be a substantial re-enactment of the former, with some slight changes and additions in the phraseology which in no way affect the question that was involved in Napier's Case or in the present proceeding. The question is identically the same in each case. But, as the similarity of this portion of the two sections may be more plainly seen when placed side by side, they are here set out in parallel columns:

ACT TO REGULATE COMMERCE.	ENGLISH ACT OF 1854.
Sec. 3. That it shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage, in any respect whatsoever.	Sec. 2. And no such company shall make or give any undue or unreasonable preference or advantage to or in favor of any particular person or company, or any particular description of traffic, in any respect whatsoever, nor shall any such company subject any particular person or company or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage, in any respect whatsoever.

It was unanimously held in that case that section 2 of the Railway and Canal Traffic Act, which prohibits undue and unreasonable preference or advantage being given by the railways and canal companies to particular persons, did not apply to the case of arrangements made by a railway whose line terminates at the sea, with a steamboat owner for carry-

ing across the sea goods and passengers brought by the railway.

The doctrine as established by the Supreme Court of the United States is that the common law imposes no obligation upon railroads to enter into such contracts, in the absence of statutory regulations to the contrary, and that if the carrier contracts to carry freight or passengers beyond its own line it may determine for itself what agency it will employ. See Atchison, Topeka & Santa Fe Railroad Company *v.* Denver & New Orleans Railroad Company, 110 U. S. 667 (28 L. Ed. 291); Pullman Palace Car Company *v.* Missouri Pacific Railway Company, 115 U. S. 587 (29 L. Ed. 499).

The method of doing through business, and upon through bills of lading, requires ordinarily that the freight charges shall be collected at the point of destination, and the carrier might for some reasons be willing to do a credit business of that kind with one connecting line and not with another. Whether the freight is collected at the points of shipment or of destination, it involves the giving of credit and payment of balances between the connecting lines doing the through business at stated intervals, somewhat akin to a partnership. And a rail carrier might, for reasons satisfactory to it, be willing to make such an arrangement with one connecting line and not with another. Besides there are certain responsibilities which the initial carrier assumes in regard to the transportation of property beyond its line, and it might very properly decline to assume that risk unless it was permitted to select, as an agency, the connecting line upon which it would do the service.

The last clause of section 3 of the Act to regulate commerce does not help complainants in the relief they seek. The common carriers named and referred to in that clause are such alone as are subject to the provisions of the Statute. In the first place, this clause requires of such common carriers the performance of duties that, in their very nature, are reciprocal and valuable to each other as well as to the public. Congress has not undertaken in this Statute to require of any other than common carriers, engaged in the transportation of interstate commerce in the manner described in the

Act, the performance of any duties whatever. In the absence of express language to that effect it cannot be inferred that Congress intended to require a common carrier engaged in interstate commerce to extend the valuable aid and facilities enumerated in this clause to another common carrier, operating a connecting line, which is not subject to the provisions of the Statute, and which cannot be required to make any return whatever on its part in the shape of similar service and facilities to the interstate carrier from which it has received these benefits. To construe this clause as embracing independent water lines would be to make such water lines subject in some important respects to the provisions of the Statute, a result that would be manifestly at variance with all the other provisions of the Statute. In the next place, the words "tracks and terminal facilities," in the connection in which they are used in this clause, evidently refer to a rail carrier, either an all-rail carrier, or a carrier part rail and part water, but not to an independent water line. And lastly, confining our construction of this clause in this proceeding to the facts of the particular case now before us, the discrimination in rates and charges forbidden by it has no application to an arrangement for through rates and through billing made by a common carrier subject to the provisions of this Statute with one connecting line for the transportation of interstate commerce, and declining to do so with another connecting line, when each of these connecting lines is an independent water line and neither of them as such is subject to the provisions of the Act to regulate commerce.

The only remaining question on this branch of the case is whether the complainants are entitled to an order that upon prepayment of freight charges at the point of delivery or receipts to the railroads, they shall be accorded as low a proportional rate to or from that point as is accorded to the Tennessee River Transportation Company upon the joint tariff in force between the defendant railroads and that company. We have frequently held that through rates may be lower, proportionately, according to distance than local rates, and that this does not necessarily involve unjust discrimination. We have also held that the aggregate of a through rate

is an entirety, and can not be divided up in this manner. Such through rates are agreed rates made by the carriers. Now, not having the power, as we have already decided, to make a through route and compel carriers to enter into the business of through billing at through rates, it is equally plain that we cannot indirectly do what we can not do directly, and that is exactly what complainants ask us to do in this instance. The complaint, however, in this case is not really directed at the difference between the through and local rates, and that is not a question in this case, because it appears that if the defendants would agree to accord to plaintiffs the through rate then the plaintiffs would be satisfied. Their grievance really consists in not having the benefit of the through rate accorded to them in one way or another; and, as we have shown, the Commission has no power to give them this relief.

The second proposition contended for by the petitioners, namely, that they shall be reimbursed as to such sums as they claim to have unlawfully paid to defendants, growing out of the facts stated, necessarily falls with the first. Having no power to compel the defendants to make through rates with complainants or to give complainants the benefit of through rates, the Commission has no jurisdiction to award to complainants the reimbursement claimed by them on account of these matters.

A result of what we have said is that this complaint must be and the same is hereby dismissed without prejudice.

JAMES McMILLAN & COMPANY, COMPLAINANTS, v. THE WESTERN CLASSIFICATION COMMITTEE, DEFENDANT.

Informal Complaint filed July 24, 1889.—Matter assigned for hearing and investigation on September 30, 1889, at Chicago, September 3, 1889.—Hearing and investigation had at Chicago, October 1, 1889.—Held to await action and report of Committee on Uniform Classification, January 9, 1890.—Held further to await report of Committee on Uniform Classification, May 2, 1890.—Report of Committee on Uniform Classification made June 21, 1890.—Decided November 7, 1890.

1. Whether a complaint to the Interstate Commerce Commission in regard to classification and rates is formal or informal, it is not enough that it be made against a classification committee or a rate committee concerning grievances alleged to be perpetrated by carriers in the matter of classification and rates, who are represented to some extent by such classification or rate committee in making rates, but which carriers are not bound to accept such classification and rates and do not accept them any further than they see proper to do so; in such a case the carriers who, it is alleged, are guilty of perpetrating the grievances should be made the parties defendant to the complaint, and the complaint should point them out by name.

2. The Western Classification Committee, in the making of classification and rates represents about seventy-five railroad companies, but the classification and rates made by this committee are merely recommendatory to the carriers in the Association and it is not obligatory upon the carriers to accept and operate them; some of the carriers upon such articles, for example, salted hides and pelts in less than carloads, make commodity rates of their own upon the classification and rates different from those prepared and recommended by the classification committee, while other carriers do not; upon a complaint by a shipper against the classification committee alone, upon this statement of facts, it is evident that no investigation or order that the Commission could make would have any binding effect whatever upon the carriers.

3. Where all the interstate carriers of the country, working through a committee selected by them for that purpose, are endeavoring to reach a uniform classification of freight, instead of having the various different and conflicting classifications that exist, it being apparent to the Commission that such uniform classification is a result that is greatly in the public interests, as well as in the interest of the carriers, and that has often been recommended by the Commission to the carriers, the Commission will not embarrass, delay or retard the carriers in this work by instituting investigations of its own under the 12th section of the Act to regulate commerce involving the classification of a few enumerated articles, transported from and to an extended area of country, but unless a formal complaint is made against the carriers in regard to such matter and a hearing of it pressed to a determination by the parties, the Commission will wait a reasonable time to see the result of the effort being made by the carriers in their efforts to arrive at a uniform classification.

4. When an informal complaint is made in regard to such a matter, against a classification committee alone, the Commission will, if it can, endeavor to reach some ground that will fairly and justly adjust the difference between the complaining shippers and the carriers, but if it appear that these conflicting differences exist not only between the carriers and the complaining shippers, but that there are other localities and other dealers whose interests are directly involved and who are opposed to the relief sought by the complaining shippers, then the practice of the Commission is not to proceed in any investigation of the complaint until the complaint is put into such shape that such localities and dealers, as well as the carriers complained of, can have an opportunity to be heard.

J. McMillan, for complainants.
J. T. Ripley, for respondent.

MEMORANDUM.

REPORT AND OPINION OF THE COMMISSION.

BRAGG, *Commissioner:*

This is an informal complaint made by complainants, who are dealers in hides, pelts, furs, wool and tallow, at Minneapolis, in the State of Minnesota, against the Western Classification Committee.

The substance of the complaint is that the classification of salted hides and pelts in less than car-load lots is too high,

these articles being now classed at 3d class, and it is insisted that they should be classed 4th class.

It appears that the rates in less than carloads and in car-load lots on these articles, according to the Western Classification are as follows:

From	To	Classification applicable.	L. C. L. Class	L. C. L. Rate	C. L. Class	C. L. Rate.
Minneapolis	Missouri river Points	Western—Green Hides, Salted....	3	43	Special	22½
"	Chicago	"	3	40	"	15
Kansas City	"	"	3	40	"	20

It further appears that the classification and rates on the same articles under other classifications make the difference considerably less between the classification and rates on green hides, salted, in less than carloads and in car-load quantities, than the Western Classification, as will appear by the following table:

From	To	Classification applicable.	L. C. L. Class	L. C. L. Rate	C. L. Class	C. L. Rate.
Kansas City	Pacific coast	Special West'n—Green Hides Salted.....Special		1.35	Special	.99
Pacific coast	Kansas City	" ...	3	2.50	"	1.35
Chicago	New York	Official — Green Hides, Salted.....	4	.35	5	.30
"	Cincinnati	"	4	.17	Special	.12
Cincinnati	Savannah, Ga.	Southern Railway & Steamship Association — Green Hides, Salted.....	6	.46	6	.46

The Western Classification Committee in the making of its classification represents about seventy-five railroads, though it does not represent these railroads in the matter of making rates.

When the complaint was first made the Commission suggested to complainants that the better course for them to pursue in a matter of this kind was to select the particular carriers whose rates in the respects complained of constituted their grievance, and make these rail carriers defendants in a complaint before the Commission if they desired to prose-

cute their claim and obtain a report and opinion from the Commission. But they replied that they had no complaint against any railroads in particular; that their complaint was a general one against the railroads generally in the northwest and involved a mere question of classification, and that the only party whose action was necessary in the matter was the Western Classification Committee. Thereupon the Commission, seeing the differences that existed in the classification and rates between carloads and less than carloads on green hides, salted, as shown in the above tables, and that these differences were considerably greater in the roads represented by the Western Classification Committee than others, but without being advised as to the circumstances and conditions under which the difference was made to the extent that it was made by the Western Classification Committee, and feeling that perhaps some useful end might be accomplished by bringing the parties together and investigating the subject, notified them to this effect; and at Chicago such an investigation was had.

The evidence taken in that investigation showed that the Western Classification Committee, by its chairman, J. T. Ripley, Esq., for reasons then given, earnestly maintained the justice of its classification of these articles, and the complainant, with equal earnestness, maintained the opposite, and no agreement was reached. But it was further shown by the evidence taken in that investigation, that while the Western Classification Committee made the classification, yet many of the carriers who were members of that Association made commodity rates on these articles different from the classification. It was thus apparent that the Commission could make no order upon the Western Classification Committee that would be effective upon these carriers in this proceeding. Nevertheless the Commission took the matters involved under consideration, thinking that perhaps some suggestion in the shape of a common ground might be reached that would adjust this difference.

The tariffs of the carriers have been examined, and it is found that there are conflicting differences between them and between localities and dealers in this matter that renders it

impossible for the Commission to arrive at any just solution of this matter unless these carriers, localities and dealers are allowed an opportunity to be heard. As regards the carriers, in a matter of this kind affecting their rates, they are absolutely entitled as a matter of right to be heard; and the Commission feels that it is nothing more than just that the proceeding should be such that localities affected and other dealers interested besides those who complain should also have an opportunity to be heard.

The Commission can do nothing more at present than to suggest this view of the matter to complainants, and to state that a complaint on their part making the carriers parties, who make the rates of which they complain, will present the question and give all parties having an interest an opportunity to be heard. Consistent with its other official duties and business engagements this is the only course the Commission can pursue with this matter at this time. No order, therefore, is made. This announcement has been delayed by a number of controlling causes now unnecessary to be stated at length. These have been chiefly such as have related to the work of uniform classification, then and since that time progressing in the work of a committee representing all the carriers of the country engaged in interstate commerce, whose report on this subject is now and for some time past has been undergoing the consideration of these carriers, and pending which the Commission has considered that no good results could be accomplished either for the public or for the petitioners by inaugurating an investigation by the Commission of its own motion under the 12th section of the Statute in regard to the matters involved in this complaint.

HERVEY BATES AND H. BATES, JR., *v.* THE PENNSYLVANIA RAILROAD COMPANY, THE PENNSYLVANIA COMPANY *et al.*

Originally decided February 7, 1890.—Applications for rehearing filed February 20, 21, 1890.—Applications granted February 21, 1890.—Rehearing had March 6–8 and April 10, 1890.—Brief for defendants filed April 10, 1890.—Decided November 22, 1890.

1. Upon a rehearing of this case, the additional evidence warrants a finding contrary to what appeared and was found in the original hearing, that the cost to the defendants of transporting the direct products of corn, including terminal expenses, properly chargeable as freight charges, between Indianapolis and seaboard points, is greater on the product than on raw corn.
2. Upon the evidence produced at the former hearing it was decided that no reason was shown for a differential rate between corn and the direct products of corn, eastward between Indianapolis and the seaboard. The difference in rate complained of was 4½ cents per hundred pounds between Indianapolis and New York, this being the proportion, according to distance, of a five-cent differential between Chicago and New York. Since the first hearing the defendants have reduced the differential to 2½ cents per hundred pounds. The complainants claimed there should be no difference. The evidence produced at the rehearing satisfied the Commission, upon grounds stated in the opinion, that the former order should be vacated, and that no further order should now be made.

W. A. Ketcham and *Jeremiah M. Wilson*, for complainants.
James A. Logan, for defendants.
John K. Cowen and *Hugh L. Bond, Jr.*, for B. & O. R. R. Co.
W. E. Hackedorn, for L. E. & W. R. R. Co.

REPORT AND OPINION OF THE COMMISSION.

VEAZEY, *Commissioner:*

The complainants are engaged in the business of the manufacture of corn products at Indianapolis, Indiana. Their interests with respect to the freight rates on the particular

commodities which they manufacture are similar to those of many other millers situated in the western country.

Twenty-one of such manufacturing companies having this common interest and representing a combined manufacturing capacity of 175 carloads per day, claiming that the action of the railroads in July, 1889, in making a different rate for the transportation of raw corn than for the transportation of corn products was in violation of the Act to regulate commerce, initiated the movement which resulted in the institution of this proceeding.

The questions now presented for consideration are raised by motions for a rehearing on the part of the defendants, this cause having proceeded to a determination favorable to the complainants, as appears from the former opinion promulgated on the 7th of February last.

When this cause was originally brought, the Pennsylvania Railroad Company and the Pennsylvania Company, whose railroads practically form one line from Indianapolis to the seaboard, were the only defendants. The cause was first heard at Indianapolis on the 17th day of September, 1889, upon the pleadings as set forth specifically in the former opinion.

After the case was submitted upon testimony and argument, but before a determination was reached by the Commission, the Baltimore & Ohio Railroad Company, which, by the location of its own railroad and connections, is interested in the corn traffic between western and seaboard points, appeared in the cause, and without submitting any testimony filed a brief on the 22d day of November.

Immediately upon the promulgation of the decision of the Commission, the defendants each filed a motion asking for a rehearing as to the questions which had been determined, and, it appearing that there were other lines of railroad interested in the traffic under consideration, it was ordered that the motion for rehearing be granted, and that all the carriers interested be cited.

The additional parties cited were the Lake Erie & Western Railway Company; the Ohio, Indiana & Western Railway Company; the Cincinnati, Hamilton & Indianapolis Railroad

Company; the Cleveland, Cincinnati, Chicago & St. Louis Railway Company; and the Louisville, New Albany & Chicago Railway Company. Of these new defendants, the Lake Erie & Western Railway Company and the Louisville, New Albany & Chicago Railway Company filed their answers, to the effect, substantially, that those corporations were satisfied with the decision and order of the Commission. The other new parties did not avail themselves of the opportunity afforded them to appear and make answer to the complaint, and it may, therefore, be presumed that these latter companies which have not appeared are at least indifferent as to a modification of the existing order. Of the seven rival lines of transportation, therefore, five may be counted as not unfavorable to the proposition that the rate on corn and its products from Indianapolis to the seaboard should be the same. It also appears that prior to the filing of the complaint a large number of western millers addressed a communication to the general freight agent of the Pennsylvania lines, complaining of the difference in the freight rates between raw corn and its products, and that official replied on the 19th of August, saying, substantially, that that company was not favorable to a discrimination in favor of either corn or its products; that it was not in any way responsible for the inauguration of the reduced corn rate; that it would be in favor of putting the corn rate at 25 cents, the same as its products, and would prefer not to carry either corn or its products on so low a basis as 20 cents per hundred pounds from Chicago to New York. It appeared at the hearing that the Pennsylvania Companies had reluctantly reduced the rate on raw corn to meet the rate which had been adopted by the Baltimore & Ohio Railroad Company.

It also appeared in evidence that before the reduced rate went into effect, at a meeting of representatives of the different lines engaged in this carrying business, all of the other railroads, including the Pennsylvania lines, at first objected to a proposition made by the Baltimore & Ohio Railroad Company to reduce the rate as it subsequently was reduced. So that we now find the fact to be that, of all the companies engaged in this carrying trade, the Baltimore & Ohio Rail-

road Company is the only carrier which insisted, as an original proposition, that a lower rate should be given to raw corn than to the direct products of corn, and it appeared that that company did not carry corn products from Indianapolis, or corn to New York.

It would seem, therefore, that the decision of the Commission upon the former occasion was in accord with the then generally prevailing sentiment among the interested carriers.

The order issued did not direct at what rate corn and its products should be transported, but provided that they should be carried at the same rate, leaving it to the railroads to fix that rate under the requirements of the statute that it should be just and reasonable.

The question now to be considered is whether the order formerly promulgated shall stand as the decision of the Commission. It is said that the decision was based upon an erroneous understanding of the actual facts, although it is fairly indicated in the motions that the conclusion was in accordance with the former testimony. The question is brought upon the record by the motions for rehearing, containing specific grounds upon which the propriety of the reversal of the former decision is claimed, and these were supported by the testimony of many witnesses.

The grounds upon which the Baltimore & Ohio Railroad Company asked the rehearing are substantially as follows:

1. That there are reasons, founded on the cost of service, for a difference in rates on corn and its products, and that it is not for the interest of the carriers to carry the direct corn products at the same rates as they carry the raw corn.

2. That it is not true that the complainants' business is unjustly affected by the difference in rates from Indianapolis to the seaboard, between corn and corn products, or that such difference in rates gives any advantage whatever to competitors in the milling business on the seaboard.

3. That the interests of the carrier, and of the producer [illegible] such inquiry and justify a lower rate on corn than [illegible] as well from inland points as from points [illegible] the Great Lakes.

Those on the part of the Pennsylvania Companies are as follows:

1. That the opinion mistakenly assumes against the facts as they were believed to exist, and can be fully exhibited to the Commission, that the corn reaching Indianapolis markets is not affected directly by water competition; the truth being that it is affected directly by water competition both upon the lakes eastwardly as well as upon the river waterways southwardly.

2. That the difference in rates on corn and its products is justified from the standpoint of the carrier, among other things, by the fact that raw corn passes directly from the elevator or warehouse of the owner to the car, loaded by his appliances and delivered to the elevator or warehouse at the seaboard and handled by the receiver without expense to the carrier, whereas the product of corn is taken from, and necessarily taken to, the expensive terminals of the carrier company, and unloaded and handled by the carrier's employees and at its expense.

3. That to put raw corn from the region of Indianapolis at a higher rate than raw corn from regions west and north thereof, would be a destructive injury to the farming interests adjacent to Indianapolis, and would result in shutting those producers out of the eastern market; and that, by putting the direct product of corn from Indianapolis at as low a rate as corn itself, the carrier would receive less than a justifiable charge without substantial advantage to the producer.

The original complaint was that the carriers by making a rate of 18½ cents per hundred pounds for raw corn from Indianapolis to New York, and at the same time charging a rate of 23 cents a hundred for the various direct products of corn, were making an unjust and unreasonable discrimination; and some of the reasons why such difference in rate operated injuriously were stated to be that such a differential rate gave a direct advantage of 4½ cents per hundred pounds to the millers at or near the seaboard and placed the com

plainants at a corresponding disadvantage; that the products of the western corn mills were sold mostly at or near the seaboard, and that the business had grown to its large proportions under a tariff from Indianapolis to the seaboard and extending over many years and always equal to and no more than the tariff on whole grain.

The original answer of the Pennsylvania Company, which was at first the only defendant in the case, admitted that the discrimination had been made in the freight rates between corn and its products, and claimed that the rate of 18½ cents per hundred for the transportation of corn was not as much as it should be, but denied that this rate on raw corn was an unlawful discrimination against the complainants. It was claimed also, in the original answer, that the rate upon corn was forced upon it by reason of competing water transportation.

The Baltimore & Ohio Railroad Company, although admitted to participate in the defense, did not file an answer to the complaint, but did file a brief.

The testimony at the former hearing was very brief and the leading facts established were scarcely controverted. Briefly stated they were as follows: That on the lines of railway interested in the question involved in this proceeding corn and its products had been classified the same since about 1870, and that classification giving exactly the same rate to the raw corn and to the direct products had remained continuously in force until July, 1889, when the Chicago rate on corn was put down five cents below the rate on the products, and that if there was any difference in the cost to the carrier between corn and its products it was in favor of the products at the lower rate, and that there was no increase in the risk as to the carriage of the product over that of the corn; that no reason existed from a railroad standpoint for making any discrimination between the rates on the two commodities. Since then, and upon this rehearing, a large volume of additional testimony has been taken and the case now stands for examination and decision upon all the evidence submitted at both hearings. Counsel for the defendants now insist that the new evidence shows that the former finding, that corn

and its products had been classified together for more than twenty years until 1889, and until that time there had been no discrimination in freight rates between corn and its products, is contrary to the actual facts.

The testimony on this point submitted at the rehearing was that of several officials of the Baltimore & Ohio Railroad Company and the two Pennsylvania companies. Their testimony tended to establish the fact that, while raw corn and its direct products had been put into the *same classification* during all those years, exactly as found by the Commission, nevertheless it had been a habit of the railroad companies from time to time, to make special rates for corn which were lower than the rates for the products of corn, and it was said by the witnesses that each special commodity rate was open to the public; that while the two kinds of freight had been nominally in the same classification, practically and in fact the rate on corn at times had been less. But these witnesses admitted that so far as the published tariff sheets were concerned, the classification had remained the same, and that the method of communicating the fact of a lower rate on the corn to the public was generally by instructions to the agents only, and one of the witnesses, perhaps the one occupying the best situation to know the facts with exactness, said that the rates were published in the following manner:

"We sent our representatives to the Board of Trade to notify the shippers on the Board of Trade that we had such a rate on that day; whether we supplemented that by a slip tariff, which we usually did, I am not prepared to say this minute. In those days a printed tariff was not as necessary as it is to-day. The rates in those days changed from day to day and hour to hour; there was no regular notice necessary."

It was said by some of the witnesses that they had an impression that at times the reduced rate on corn was printed and sent out, and it was thought that such a printed notice could be found and given to the Commission; no such printed rate was, however, submitted.

It was also testified by reputable witnesses who were at the

same time shippers of corn and manufacturers and shippers of corn products in their respective localities, viz.: Decatur and Lockport, Illinois, and Circleville, Ohio, that the charges on corn and its products had been uniform for many years.

But we think it is apparent from all the testimony upon this point, and we so find the fact to be, that prior to the passage of the Interstate Commerce Law some carriers, from time to time, when competition was sharp or when there was a large crop to be moved, did at some points give a lower rate upon corn than on its products, and as to corn produced in the territory westerly of Chicago, at least, it was largely so moved. But these variations of rates were spasmodical. They did not have that permanency, that certainty of continuance, which would warrant the commercial community in relying upon the reduced rate in its business dealings. One of the railroad officials who testified for the defendants, said as to these reduced rates, which illustrated their instability, that they "made a tariff Saturday night and cut it Monday morning."

So it appears that when the companies were establishing a rate which was to be given to the public by means of printed tariffs and for the information of business people who were expected to conduct their affairs with reference to the cost of transportation, raw corn and its products were classified and rated the same, but when, for reasons mainly growing out of sharp competition between the different carriers by rail or water, or for the purpose of participating in the carriage of a large crop, the railroad companies concluded that their interests would be advanced by reduction, they did at times give a lower rate on corn than on its products.

If it had appeared that the course of business on the part of the carriers had been to make a difference in the rate on corn and its products with reasonable certainty, or by some rule of uniformity, as applied to differing times or conditions, that fact would, of course, have an important bearing upon the question; but from the testimony we are unable to find that there was such a degree of certainty as to the changes, that shippers could reasonably calculate as to what the cost of transportation would be.

The above is the only modification which the evidence warrants on this point.

It is also claimed by the defendants that the former finding to the effect that no reason existed, founded on the cost of service, for a difference in rate on corn and on corn products is overcome by the additional evidence. At the former hearing it was not contended that any reason existed founded on cost of service for making the change in rate which took place in 1889, but upon the rehearing, while it was admitted that the expense to the carrier while the freight was in actual transit was substantially the same in each case, yet it was claimed that after raw corn reached its destination the cost of handling it at the terminal station was less to the carrier than the cost of handling the product, and it was shown that the usual course of handling corn was to take the car in which it was loaded directly to the elevator and there unload it by mechanical means, while the product went to the railroad warehouses to be unloaded by laborers. It was also suggested that corn was largely carried in train-load lots while the product was not, and it was claimed for this reason that a lower freight charge was proper as to corn.

We think the additional testimony has established the fact that the cost of service to the carrier, including terminal expenses properly chargeable as freight charges, is greater on the product than on raw corn. The evidence does not satisfactorily show how much the increase is. We think it is not large, and it has apparently been considered as small by traffic managers and was disregarded by them in their practical dealing with the subject in making classification prior to the change in 1889.

But in this connection the new evidence has developed further considerations bearing on the main question as to whether the order of the Commission shall be changed. At the former hearing great weight was given to the fact that the railroads east of Chicago, including the defendants, have never heretofore made any difference in the rate for corn and its products. That was regarded as a fact tending to show that there was no good reason for such difference, or at least that the carriers never considered that there was substantial

ground of difference in rate. That finding is now varied only to the extent above suggested, that is, that the rates have always been the same except when the carriers made an exceptional rate as to corn under circumstances not applying to the product. The defendants now say as to this fact that when the rates on corn and the products were alike they were higher than now, and were high enough so that the rate as an average for the two articles was only fair for the railroads, whereas the present rate on corn is down to the lowest point that railroads can possibly reach on corn and leave any profit, and lower than they can go on the product without loss.

The evidence tends to support especially the last branch of this proposition. The Baltimore & Ohio Railroad Company made the discrimination between the rates on corn and its products in the first instance in the summer of 1889, which was subsequently adopted by other railroad companies, for the purpose of getting a share of the corn traffic from Chicago. The twenty-cent rate was adopted as an exceptional rate to meet the competition by the water route from Chicago east, or the combined water and rail route. Immediately previous to this reduction on corn, neither the Baltimore & Ohio nor the Pennsylvania lines were moving any considerable amount of corn, although the crop to be moved was one of the largest of recent years. As the rate by water through the lakes and canal was much below twenty cents per hundred pounds from Chicago to New York, it was deemed necessary to put the reduction to twenty cents in order to accomplish what the roads were after by the reduction. The reason given in evidence why a like reduction was not made on the corn products was that the products were not transported by water to any great extent, and the officers of the Pennsylvania line testified that the product was largely distributed direct by rail to local stations at a rate not exceeding the through rate, that is, local stations east of Pittsburgh, such as Scranton and Williamsport, the opinion being expressed that there was fifty per cent. of the entire traffic of the Pennsylvania lines thus distributed, and also that the carriage of the product bore a very small proportion to that

of corn, one witness stating that it was not more than one per cent. over the line of which he was an official.

We find that the reasons which induced the reduction on corn did not apply to the product from a railroad standpoint. We also find that the same general conditions existed for making an exceptional rate on corn at the time this rate was made, which had existed in previous years when such rates had been temporarily adopted. We here encountered some embarrassment from the fact that this rate, which was at first adopted as an exceptional rate, has continued to be the rate ever since, running through a period of over a year, and continuing, therefore, beyond the time that would ordinarily give occasion for an emergency or exceptional rate, but this may have resulted from the fact that the large amount of corn on hand for transportation was not exhausted in the usual time when the previous exceptional rates were adopted for the purpose of its movement, and also from the pressure that has existed during the year past for especially low rates on corn. The differential rate between corn and its products complained of was five cents from Chicago east, or more precisely 4⅓ cents from Indianapolis, but the claim was that there should be no difference.

Since the rehearing in this case and on June 9, 1890, this differential was reduced by the carriers to 2½ cents. The following table shows the rates on different grains and their respective products since July 22, 1889, from which it appears that the present rate on corn from Indianapolis is 18½ and on the corn products 21 cents, this being the proportion of the Chicago rate on the Chicago basis of 20 cents on corn and 22½ cents on corn products:

RATES ON GRAIN, FLOUR, ETC. (ALL RAIL.)

From	Dates effective.	Wheat.	Corn.	Oats and its products.	Wheat and its products.	Corn products.
Chicago, Ill.....	July 22, '89	20	20	25	25	25
	Aug. 1, '89	25	20	25	25	25
to	May 12, '90	25	20	22	25	25
	May 26, '90	25	20	20	25	25
New York.....	June 9, '90	22½	20	20	22½	22½

From	Dates effective.	Wheat	Corn.	Oats and its products.	Wheat and its products.	Corn products.
Indianapolis . . .	July 10, '89	18½	18½			
	July 22, '89	23	18½	23	23	23
to	Aug. 12, '89	23	18½	23	23	23
	May 12, '90	23	18½	20½	23	23
	May 26, '90	23	18½	18½	23	23
New York	June 9, '90	21	18½	18½	21	21

The order in this case at the original hearing having been as before stated, simply that there should be no difference in the rates between corn and its direct products, the result, if that order was to be enforced, would be for defendant lines either to raise the rate on corn or to lower it on the products. The new facts developed on the rehearing are that the cost of the service to the carriers is, to some extent, greater for the products than the cost of the service for corn, and also that the downward pressure of competition in the transportation of corn was greater than it was as to the products of corn. Both of these facts furnished some reason for a difference in rate between the two commodities, but the evidence does not with sufficient precision show just what that difference should be from a railroad standpoint. The railroads having cured the original difference complained of to so great an extent, it has been a very embarrassing question, which the Commission has carefully considered, whether it ought to undertake to go further and lessen this difference more than has already been done by the defendants themselves. The tendency has been since this case was under consideration for the carriers themselves to bring all grain and its products at substantially the same rate, and there has been the same tendency on the part of the Standing Committee on Uniform Classification, representing the leading railways of the country, as shown by a report which is denominated "Uniform Freight Classification No. 1."

In view of these facts, and of the difficulty of determining, upon the evidence in this case, as to what would be a just and reasonable rate on the product, while the rate on the

corn is on the basis of twenty cents from Chicago, it has seemed to the Commission that the better course would be to leave for the present with the carriers the solution of the problem, which they have entered upon and in which they have made so much progress. The reason why a difference in the freight on the different grains and their respective products has not always been recognized in the past has been stated in argument, as above suggested in substance, namely, that a general average was struck rather as a matter of convenience when the amount of traffic in the product was very small, and this has continued to be adhered to as a matter of usage, but now that the traffic in the product has increased and evidently is to increase in the future, the time has come when it is impracticable for this usage to be continued and when the respective rates must be adjusted on the principles which apply to traffic generally. Such in general is the explanation given by the carrier.

On the other hand it must be recognized that there are other reasons why the former usage should continue, especially when corn is carried at a normal and reasonable rate, growing out of the fact that the milling business at the west has probably been established with more or less reference to the continuation of a practice that has been so long in vogue. As the traffic in corn is so much larger than that in the product, the public have great interest that the rate thereon should not be raised above what is just and reasonable for it and that it should not be put above such a rate solely on account of individual interest in having it at the same rate with the product. The question is one of a just and reasonable rate for corn and for its direct products. The law undertakes to forbid discriminations that are unjust, but not to equalize advantages springing from rates that in themselves are just. It would be a violation of this proposition if the Commission should deviate from a just and reasonable rate in the case of either corn or its products for the sake of equalizing advantages of geographical location as between western and eastern millers, the claim, on the one hand, being that the eastern miller gains an advantage from the

differential rate as to the two commodities by reason of being nearer the market for the products; on the other hand, that the western miller gains an advantage, under a rate common to both, by his location near the territory of corn production and by milling in transit, which, whether legal or otherwise, was shown to largely prevail, and by being able to reach intermediate points between the west and the seaboard with the products at a less rate than such points can be reached by the eastern miller, because the latter, after paying for the transportation of the raw corn to his mill, then had to pay for the transportation of the product back to such intermediate points. As between these articles we do not think that these respective claims should have a controlling influence in the determination of what is a just and reasonable rate for the corn or its products. Our conclusion is, upon the facts now established, including the fact that the carriers have themselves brought the respective rates so near together since the former hearing of the cause, by reducing the rate on the products and not raising the rate on the corn, and without passing upon the point as to whether the present difference in rate is precisely what it should be, or even whether there should be any difference, that the former order, which simply required that the rates should be brought together, should be vacated.

Upon the evidence now before us we are clear that the present difference in rate should not be increased, and are inclined to the belief that it can be diminished and the respective rates be just and reasonable, but the evidence in this case does not justify us in ordering the common rate to be the present rate on corn; and we think the public interest forbids us to make an order that is susceptible of being construed as an invitation to raise the rate on corn and that could be as literally obeyed by so doing as by lowering the rate on the products of corn. Since this case was first heard the whole subject of corn rates has been exhaustively investigated by the Commission and its conclusions and views have been published. In the light of that investigation and of what has been shown upon this rehearing we are dissatisfied

with the former order in the respect last alluded to; and are not satisfied that any order of relief of the alleged grievance, beyond the relief the defendants have themselves applied, should now be made.

The original order is vacated, and on the facts now developed no further order is made.

JOHN C. HADDOCK, COMPLAINANT, *v.* THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY, DEFENDANT.

Complaint filed June 21, 1890.—Answer filed July 14, 1890.—Application of complainant for subpœnas *duces tecum*, filed October 15, 1890.—Hearings had on application for subpœnas *duces tecum* and on defendant's motion to dismiss the proceeding, October 21 and November 1, 1890.—Briefs and printed arguments filed November 1–8, 1890.—Decision filed November 30, 1890.

Complainant is a miner and shipper of anthracite coal from a region in Pennsylvania from which defendant is a common carrier, and also a miner, purchaser and shipper of coal on its own account.

Complainant alleges that defendant gives to itself as a shipper of coal an undue and unreasonable preference and advantage in rates, as compared with those charged complainant; and further alleges specifically that the rates charged him by defendant on coal east to Hoboken, and west and north to Buffalo and other points, are unreasonable and unjust.

Respondent in reply relies on certain contracts between itself and complainant entered into prior to the enactment of the Act to regulate commerce, as controlling the charges for the transportation of coal by the former for the latter, and as precluding the jurisdiction of the Commission in the premises. The substance of one of these contracts is that the price for transporting complainant's coal to Hoboken shall be fifty per cent. of the price for which respondent sells its own coal in Hoboken; the substance of other contracts is that complainant may ship his coal to points north and west upon the same terms and conditions as respondent for the time being transports coal for other parties, the terms to other parties being fixed in the published tariffs of respondent.

No claim is made that the validity of these contracts has been impaired or affected by the passage of the Act to regulate commerce, although the Commission distinctly propounded the inquiry whether such claim was made.

The case being thus at issue the complainant applied for subpœnas *duces tecum*, to compel certain third parties, as well as officers of respondent, to produce certain papers and contracts, alleged to be material as evidence upon the issue; and respondent moved to dismiss for want of jurisdiction.

The Commission carefully abstains from expressing any opinion as to the effect of the Act to regulate commerce in impairing the validity of the contracts referred to, but, assuming them to be still in force, as both parties admit them to be: *Held*—

1. That complainant is precluded, by the terms of the contract for shipping coal to Hoboken, from going into evidence to show that the rate on his coal to Hoboken ought to be different from that fixed by the contract; and witnesses and evidence asked for to that end are immaterial.
2. The contracts providing that complainant may ship coal to points north and west, on the same terms and rates that respondent for the time being gives other persons, do not preclude complainant from showing that such rates are unjust, oppressive or unreasonable. Complainant is therefore entitled to a hearing upon that question.
3. The Commission cannot, for the purpose of discovering and preventing unjust discrimination by respondent, which is both a shipper and a carrier of its own products over its own line, compel it to keep separate accounts showing what it charges itself for transportation or what the cost of transportation to it is; and even were such a separate account required, it would form no safe guide in determining whether respondent did or did not use its power as a carrier oppressively.
4. The application for subpœnas *duces tecum* is denied. As applicable to contracts and papers of third persons, not before the Commission, it is denied on the ground of the injustice that might be done such persons; and generally (for the present at least) it is denied on the ground that the material facts can be proven by the testimony of witnesses, without the aid of documentary evidence; although respondent will be expected to produce, for purposes of examination, any books and papers of its own, material to the controversy.
5. The respondent's motion to dismiss the complaint *in toto* is denied, as good ground of complaint is set forth in respect to northern and western shipments.

Simon Sterne, Charles F. Beach, Jr., H. M. Hoyt and *G. L. Halsey*, for complainant.

M. E. Olmstead and *John G. Johnson*, for defendant.

REPORT AND OPINION OF THE COMMISSION.

COOLEY, *Chairman:*

The petition of the complainant in this case shows:

First. That petitioner is and has been, as hereinafter mentioned, an owner of anthracite coal mines in Plymouth

and Luzerne in the county of Luzerne, Pennsylvania, and an extensive miner and shipper of anthracite coal therefrom. That petitioner's mines are known as the Dodson and Black Diamond Mines, and have together a daily capacity of from 2,200 to 2,300 tons of coal.

Second. That defendant is a common carrier engaged in the transportation of passengers and freight by railroad between points in the State of Pennsylvania and points in the States of New York and New Jersey, and as such is subject to the Act to regulate commerce.

Third. That defendant is a corporation organized and existing under the laws of Pennsylvania, and is largely engaged as common carrier in transporting coal as interstate commerce from the Wyoming and Lackawanna coal regions in Pennsylvania eastward to tide-water at Hoboken, New Jersey and westward to Buffalo, New York, and to intermediate points between said east and west termini, and to points beyond. That petitioner's mines aforesaid are located immediately upon the Lackawanna & Bloomsburg Railroad, which is a branch of defendant's railroad; that all or nearly all of petitioner's coal has been shipped as interstate commerce over the defendant's lines of railroad, and that petitioner has no other so convenient means of transport or carriage for his coal to market as the lines of railroad of defendant.

Fourth. That one of the principal markets for anthracite coal is in the city of New York, and that coal for points eastward from New York is delivered to vessels at some point in or about New York Harbor and thence shipped to its destination.

That there is nevertheless a valuable and growing market for anthracite coal to the westward of the anthracite coal regions of Pennsylvania. That the greater part of said westward traffic in anthracite coal over defendant's line of railroad is by way of the city of Buffalo, whence shipments are made by lake or transfer to other and connecting railroads.

Fifth. That in addition to petitioner there are other miners and shippers of anthracite coal, including the defendant herein, engaged in shipping anthracite coal as interstate traffic from said Wyoming and Lackawanna coal regions to

various points in the States of New York and New Jersey and elsewhere over the lines of defendant's railroad.

Sixth. That defendant is itself one of the largest owners of anthracite coal mines in the United States, its mines being located on the line of its own railway and in the immediate neighborhood of petitioner's mines, and it is the largest single shipper of coal over its own lines to Hoboken, and either the sole or almost the sole shipper over its lines westward.

Seventh. That petitioner's Dodson mines at Plymouth are 165 miles from tide-water at New York and 285 miles from Buffalo, measured on the line of defendant's railroad.

That petitioner's Black Diamond mines at Luzerne are 163 miles from tide-water at New York and 283 miles from Buffalo, measured on the line of defendant's railroad.

That defendant has a published rate or tariff of charges which it charges private miners and shippers of coal, but that it gives to itself as a miner and shipper of coal what is in effect an undue and unreasonable preference and advantage in the matter of rates, in that the said defendant, in disposing of the product of its own mines, or in selling the coal which it buys from other collieries, does so at a price which will not cover the cost of mining coal at its own collieries, or the price it pays other operators, adding thereto a reasonable charge for selling expenses and the rate of transportation it charges to other shippers and to petitioner.

That said published rate or tariff at the present time is $1.80 per ton of 2,240 pounds on all anthracite coal shipped to Hoboken and delivered there free on board vessels, and $2.50 per ton on all anthracite coal shipped to Buffalo, whether consigned to Buffalo or delivered there free on board vessels.

That the rate charged by competing railroads for carriage of anthracite coal to Buffalo from the same region for the same length of haul and under similar circumstances and conditions, is 25 and 50 cents a ton less than is charged by defendant.

Eighth. That the charges made by defendant for the handling and transportation of petitioner's coal to Hobo-

ken, New Jersey, and delivery there on board vessels are unreasonable and unjust.

That the charges made by defendant for the handling and transportation of petitioner's coal to Buffalo, whether consigned to Buffalo or intermediate points, or for delivery there to the other railroads or on board vessels, are unreasonable and unjust.

Ninth. That bituminous coal is like traffic with anthracite coal within the meaning of the Act to regulate commerce; that it comes chiefly in competition with the smaller sizes of anthracite coal, such as are commonly known as pea, buckwheat and culm, the production of which is not a matter of choice with miners, but such sizes result from the most careful manipulation of coal in mining and preparing for domestic use. That in the transportation of these smaller sizes of anthracite coal defendant discriminates in its own favor, and against complainant and other shippers, and that its charges for transportation made to other shippers than itself are excessive and unreasonable.

That with the use of ordinary care and diligence to prevent waste and small sizes, there will result of culm and of pea and buckwheat each a large percentage of the total output. That the percentage of these smaller sizes now produced is greater than formerly, for the reason that the carrying rates of anthracite coal being unjustly higher than for the carrying of bituminous coal for a like and contemporaneous service, the large sizes of anthracite formerly used in manufacturing have been largely driven out of the market, and only the smaller sizes are shipped. In making such smaller sizes, the percentage of culm, pea and buckwheat is greatly increased.

That were the prices charged for the transportation of culm, pea and buckwheat no higher than the prices charged for the transportation of bituminous coal, these products of the coal mines of your petitioner could and would find their way to market, but the price of transportation now charged by defendant is the same as for the larger size of anthracite, and that such price is not justified by the value of the article or the cost of transportation, that it is higher than the rate

charged by other transportation companies for carriage of the same products, and is unreasonable and unjust. That in consequence of such unreasonable and unjust rate of transportation charged by the defendant, your petitioner can not realize more than, or as much as, the cost of the transportation thereof as now charged, and these products therefore become waste.

That the rates charged to your petitioner for the transportation of his anthracite pea, buckwheat and culm to Hoboken and Buffalo and intermediate points are excessive and unreasonable.

Tenth. That by reason of the unjust advantages secured to itself by such discriminations and by the unjust and excessive rates charged to private miners, the property and power of defendant have now become so preponderating that three-fourths of all the coal tonnage carried by defendant eastward is its own coal, and all or nearly all of its westward coal tonnage is its own coal, either mined or purchased by it, and that the same is true of all the railroads carrying coal from the Wyoming and Lackawanna coal regions.

That the rates charged by defendant and other roads to private shippers are for the most part uniform, and that by conspiracy and combination as to rates, and by a limitation of the quantities shipped, defendant and other railroad companies are able to and do control the market price of coal, and in effect unlawfully restrict the uses to which anthracite coal shall be put, and in many instances compel the miners to sell their coal at the mines to the railroad companies, at a price dictated by the latter, to the great damage of petitioner and other miners of anthracite coal.

Eleventh. That the anthracite coal carriers, by charging a very high rate for carriage, make the market price so high that its sale is cut off except for uses for which bituminous coal is not fitted. By reason of the high tariff on anthracite and the low tariff on bituminous coal, anthracite is largely displaced and driven out of the market for use in manufacturing and making steam. That the uses of anthracite coal are confined, by reason thereof, mainly to domestic use.

That one result of this restriction of market is that, when, as is usually the case at some time during the year, the demand becomes sluggish and the market price is lowered, and the rates of transportation being nevertheless maintained at a point which makes it impossible to ship coal at a profit, the mines are then shut down and the miners thrown out of employment until the stock in market is reduced and prices are again advanced and mining resumed. That the result is injurious and hurtful alike to the private owners and to the miners.

Twelfth. That the rates charged as aforesaid to petitioner constitute an unlawful and inequitable discrimination against him and all others similarly situated as shippers, against his and their business as interstate traffic, and against the region of country in which he and they operate and conduct the business aforesaid.

Thirteenth. That it is contrary to public policy and to the Constitution of the State of Pennsylvania that the same person should be a common carrier and a miner and shipper of coal. That such double relation to the coal traffic inevitably results in unjust and burdensome discriminations by the carrier against private miners and shippers of coal and dealers therein. That defendant, in violation of said Constitution and since its adoption in 1874, has acquired and owns and operates coal mines in the State of Pennsylvania and sells their products in competition with petitioner. That such offense against public policy and the Constitution of Pennsylvania is equally contrary to the provisions of the Interstate Commerce Act. That defendant also, contrary to law and public policy, purchases from other miners large quantities of coal at the mines, not for its own use, but to be afterwards dealt in and sold as merchandise in competition with petitioner's coal. That the profits of carrying the coal are constantly and inevitably increased to a point which barely permits the private coal miner to ship his coal without loss; that he is often in effect compelled to sell his product to the railroad company at its own price at the colliery, or antagonize its power

and encounter its arbitrary and excessive transportation charges, its grudging, irregular and capricious supply of facilities and its competition as a dealer able to dominate the market.

That the holdings and ownership of coal lands and coal mines in the anthracite region by railroad companies, including defendant, have constantly increased, both in absolute quantity and in proportion to the whole, to such an extent that now nearly or quite three-fourths of the anthracite coal mines and fields in the United States are owned directly or indirectly by the defendant and the other railroad companies running into that region. That such preponderance and power in the hands of a few corporations place private and non-corporate owners and miners at a great and dangerous disadvantage and leave them at the mercy of their powerful rivals, unless the Commission shall compel them to make such charges for transportation as are just and reasonable, and to abstain from all unjust discrimination.

Fourteenth. That petitioner is at a greater disadvantage in his dealings with the defendant than are other miners and shippers of coal over its lines, inasmuch as defendant is mortgagee of petitioner's mines; and further because of contracts regarding the transportation of his coal entered into by petitioner at or about the dates of the said mortgages to defendant, and which at the time he deemed it expedient and necessary for him to make, in view of the dominating power of the defendant over his business.

That defendant, under such transportation contracts, claims that petitioner is required to ship all his coal over defendant's railroad; that if such claim be well founded, it is of the greater importance to petitioner that the said defendant shall be strictly held to the requirement that its charges shall be reasonable and just, and that there shall be no unjust discrimination in any form against petitioner. That petitioner avers that there is nothing in said mortgages or contracts which gives to defendant the right to impose upon petitioner unjust or unreasonable charges for transportation, or to discriminate against him in any manner.

Petitioner prays that order be made commanding the defendant to cease and desist from said violations of the Act to regulate commerce, and for such other and further order as the Commission may deem necessary in the premises.

Respondent filed answer to this petition, admitting ownership of the mines known as the "Dodson" and "Black Diamond" mines by the complainant; admitting the ownership by itself of railroad lines as stated, and that it is engaged, as charged, in the transportation of anthracite coal purchased and mined by itself in pursuance of authority contained in its charter, and also of freight for other corporations and persons; that it transports coal for others, including complainant, as well as its own coal, from the Wyoming and Lackawanna coal regions in Pennsylvania eastward to tidewater at Hoboken, New Jersey, and westward to Buffalo, New York, and to intermediate points between such east and west termini and to points beyond. It admits the allegations in the 4th, 5th, 6th and 7th paragraphs of the petition, and denies those in the 8th, 11th and 12th paragraphs. It admits that it has a published rate or tariff of charges to shippers of coal of $1.80 per ton of 2,240 pounds of anthracite coal to Hoboken, delivered free on board vessels, and $2.50 per ton on like coal shipped to Buffalo, but denies that complainant was charged those rates for reasons hereinafter stated; admits that other carriers charge less on coal to Buffalo by 25 to 50 cents a ton, but says their rates are unreasonably low, and defendant is unwilling to accept the same; denies that bituminous coal is like traffic with anthracite within the meaning of the Act to regulate commerce; admits that certain small sizes of coal, known as culm, pea and buckwheat, result from the manipulation of anthracite coal in mining and preparing it for market, and that these small sizes are less valuable than the larger sizes; denies that any of its rates for transporting any sizes of anthracite coal are unreasonable or unjust; denies that bituminous and anthracite coal can properly be compared as to cost of transportation; admits that it carries more coal for itself than for others, but denies that the preponderance of

its own traffic is by reason of unjust advantages secured to itself or of unjust or excessive rates charged to others; admits that the rates charged by it and other roads to private shippers are for the most part uniform; claims that having received its charter before the present Constitution of Pennsylvania was adopted it is not subject to the provisions therein which might otherwise affect its business.

The answer then proceeds to say that at the request of complainant, and for the purpose of enabling him to purchase said Dodson and Black Diamond mines, or an interest therein, or to discharge liens thereon, and to enable him to operate said mines, the defendant has from time to time advanced him large sums of money and given him at his request contracts for the transportation of the products of his mines at favorable rates, and has at his request entered into agreements for the repayment of said advances in small installments, and proceeds to set forth contracts, agreements, bonds and mortgages, marked, respectively, Exhibits from 1 to 13, inclusive, to show the facts; all of which were entered into previous to the passage of the Act to regulate commerce. It avers that complainant, since the passage of that Act, has insisted upon the continuous validity of the agreements for transportation, and defendant has acquiesced; asserts that the terms upon which defendant must transport the coal of complainant are found in said contracts; that defendant has not deviated from the line of its obligations and duties under the same, but if it has, the remedy of complainant is in the courts; and it therefore prays that the complaint be dismissed.

To this answer were attached as exhibits copies of several agreements which are referred to therein. Exhibits Nos. 1 and 2 are an agreement for a loan and a bond for the money loaned, dated February 24, 1882. Exhibit No. 3 is the abstract of a mortgage deed for the loan. All these are between the defendant and John C. Haddock and Charles F. Steel, who are the borrowing parties. Exhibit No. 4 is a contract between the same parties for the transportation of the coal of Haddock & Steel from their colliery, located on the mortgaged lands and known as the "Black Diamond" colliery, to

Hoboken, in the State of New Jersey. The provisions of this contract important for the purposes of this proceeding are that Haddock & Steel shall deliver to the railroad company, loaded in its cars at the said colliery for transportation to Hoboken, all the coal which they have the right to mine and remove from said lands, at the rate of 150,000 tons of 2,240 pounds of coal annually till the whole is removed and delivered, the same to be in as nearly equal daily deliveries as may be practicable, Sundays and the usual holidays excepted, the railway agreeing to furnish cars for the purpose. There are then the following agreements:

"And the said parties of the first part agree to pay the said party of the second part for the coal transported as aforesaid at the rate following, to wit: For the coal transported to Hoboken, as aforesaid, and then by the said party of the second part transferred from the cars into vessels provided by the said parties of the first part, the rate shall be fifty per cent. of the average price per ton at which the said party of the second part shall have, during the month in which said coal is transported, sold and delivered their own coal, delivered on board of vessels at Hoboken aforesaid, in ascertaining which price no coal below the size known as 'pea' shall be taken into account, which payment shall be made on the 'eighth,' 'fifteenth,' 'twenty-second' and last day of every month at the office of the said party of the second part, in the city of New York, in funds par in said city. And for the purpose of ascertaining the amount to be paid on said days, it shall be assumed that the average price at which the said party of the second part sold and delivered their own coal on board of the vessel at Hoboken during the preceding month was the same as the price during the then present month, and payments shall be made upon that assumption, subject to adjustment when the price for the present month is ascertained.

"And the right of the said party of the second part, to be paid for said transportation and handling, shall be held to have accrued as soon as the coal arrives at Hoboken, or such point convenient thereto as may be provided for the standing

of loaded cars, even though the coal, for any reason, had not been transferred into vessels.

"The said parties of the first part may send such portion of the said coal as they shall desire to such points and places north and west upon the same terms and conditions as the said party of the second part for the time then being transports coal for other parties over the railroad of the said party of the second part.

"And in case the said parties of the first part shall at any time fail to pay the said party of the second part as hereinbefore provided, for the transportation or handling of any part or portion of said coal, the said party of the second part shall, in addition to all other legal remedies for securing and collecting the same, have the right to take, and, in such way and manner as the said party of the second part may deem proper, sell and dispose of any and all of the coal of the said parties of the first part, which may be in the cars of the said party of the second part, at the aforesaid colliery or collieries, or at any other place, or in transit, or in stock, and to apply the proceeds in payment of the amount due the said party of the second part, for transportation of said coal, or due and unpaid for the transportation of any other coal, returning the excess, if any, to the said parties of the first part.

"And in case of the failure of the said parties of the first part to furnish for transportation the coal as aforesaid, or to pay for the transportation thereof, as the same may become due and payable, the said party of the second part may take possession of the mines and improvements of the said parties of the first part, in the way and manner as hereinafter provided.

"The number of tons transported shall be ascertained by the weights of said coal, as weighed in the cars of the said party of the second part, at the colliery aforesaid, by a person to be approved by the general coal agent of the said party of the second part, and paid by the said parties of the first part, upon a suitable scale to be provided by the said parties of the first part; and in weighing the same the usual allowance to compensate for snow and ice that may be on the coal or cars, as is customary to be made by the said party of

the second part in weighing its coal, and for dust and wastage in transportation, provided for in existing transportation agreements made by the said party of the second part, shall be made.

"And the said parties of the first part further agree to furnish, and have placed at such points as the said party of the second part may direct at Hoboken, aforesaid, vessels for the reception of at least eighty per cent. of the said coal, so that the said party of the second part can transfer the same directly from the cars into vessels within twenty-four hours from the time of the arrival of the cars containing said coal at Hoboken, or at such place convenient thereto as the said party of the second part may have or provide for the standing of loaded cars.

"And the said party of the second part further agrees to provide stocking grounds at or near Hoboken, aforesaid, for the storing of, and to unload and store so much of, said coal, not exceeding twenty per cent. thereof, as is not transferred directly from cars into vessels, and when vessels to receive the coal thus stocked are furnished, shall load the same into vessels. Should the said parties of the first part fail to furnish vessels so as to enable the said party of the second part to transfer at least eighty per cent. of said coal directly from the cars into vessels within twenty-four hours, as aforesaid, the said party of the second part may at their option discontinue furnishing cars for the reception of coal at the said colliery until vessels are furnished as aforesaid—it being understood and agreed that the said party of the second part shall not be bound to furnish stocking room for more than six thousand tons at any one time.

"The average net price the said party of the second part shall sell their coal on board vessels at Hoboken shall be determined by a written statement made by the treasurer of the said party of the second part.

"And the said party of the second part further agrees that if at any time a general reduction in the rate hereinbefore provided for transportation of coal to Hoboken is made to other shippers of coal, the said parties of the first part shall be entitled to the benefit of the same, while such reduced

rate is in force. And the said party of the second part shall have the right to the use of so much land at or convenient to the said colliery as they may require for a car repair shop, with the right to remove the same at their pleasure, prior to or upon the termination of this agreement.

"If by reason of strikes among the employees of either party (even though such strikes should be caused by a reduction of wages), or by reason of injury to the works, buildings, or fixtures of either party, or delays, or obstructions to the mining or transportation of said coal, either party should be temporarily disabled from furnishing or transporting said coal as hereinbefore agreed, neither party shall, for such temporary non-fulfilment of this agreement, be liable to pay damages, if reasonable exertion is made to remove such disabilities.

"And it is further agreed by and between the parties hereto, that the said parties of the first part shall have the right, upon giving three months' written notice to the general coal agent of the said party of the second part of their intention so to do, to increase the annual deliveries as aforesaid to three hundred thousand tons per year. And after having given such notice, they shall thereafter be bound to deliver for transportation as aforesaid, to the said party of the second part, such additional quantity annually during the term of this agreement."

This agreement bears the same date with the other papers above mentioned. Exhibit No. 5 is a similar agreement made between the Plymouth Coal Company, by John C. Haddock, Chairman, and the respondent company, for the transportation of coal from the Dodson mine to Hoboken, aforesaid, and to Syracuse, in the State of New York, on substantially the same terms, the rate for transportation from Syracuse to "be such as the said Railroad Company may from time to time fix, not exceeding the rates charged other parties similarly situated whose coal is destined to the same market." This bears date February 25, 1879. Exhibit No. 6 has no importance in this controversy. Exhibit No. 7 is another agreement of complainant with respondent for the transporta-

tion of coal from the Dodson colliery. Exhibits Nos. 8 to 13 inclusive all have reference to the same general subject of loans from respondent to complainant, and of the transportation by respondent of complainant's coal from the collieries mentioned. The transportation agreement first mentioned sufficiently shows the terms of all the agreements for transportation put in evidence, and the subsequent agreements are therefore not further mentioned or given.

The case being thus at issue, complainant on affidavits filed showing cause therefor made application for subpœnas *duces tecum* addressed to Samuel Sloan, President; E. R. Holden, Second Vice-President; William R. Storrs, General Coal Agent; Frederick H. Gibbens, Treasurer of the respondent company, and various other persons named, requiring the production of books, accounts, papers, etc., and, among other things, calling for contracts, agreements, and documents in possession of the person named, or under his control, "relating in anywise to the matters hereinbefore specified, or to any other matter whatsoever in issue in this proceeding as the same is disclosed by the pleadings herein." What was required of each person is specifically mentioned, but it is not deemed necessary to state in detail here.

When this application for subpœnas *duces tecum* was called up, motion was at the same time made on behalf of the respondent to dismiss the whole proceeding upon the ground that it presented only judicial questions, and did not, therefore, come within the jurisdiction of this Commission. The basis of the action in general terms may be said to be this: that the parties had by their contracts fixed for themselves definitely and conclusively their rights in respect to the transportation of complainant's coal, so that if the complainant was in any respect wronged in regard to such transportation the wrong was one for which he had ample redress in the courts.

The application of the complainant and this motion to dismiss were taken up and argued by counsel at the same time. Upon the argument neither party raised any question of the original validity of the contracts for the transportation of the coal mentioned. Nor was it claimed that any subsequent

legislation, State or National, had in any manner had the effect to nullify or change the legal obligations of the parties under them. The question was put distinctly by the Commission to the counsel of both parties, whether it was claimed that the contracts in any respect had been changed or modified in their legal operation or put an end to by the Act to regulate commerce, and the reply was understood to be positive that such a claim would not be advanced. The parties differed in their construction of the contracts, and in their understanding of their rights respectively under them, the complainant insisting among other things that they were to be construed in harmony with the provisions of the Constitution of Pennsylvania hereinafter referred to, but the argument all proceeded upon the assumption that when a correct understanding of the contracts was reached the obligations of the parties must be determined thereby so far as they were found to govern the case. The fact that respondent is a large owner of coal lands upon which it is engaged extensively in the mining of coal and transporting the same to market over its own lines, and that it also purchases and deals in coal not mined by itself, and that this is done by authority of State law, was taken on the argument as undisputed, and is assumed to be so in what will now be said; and inasmuch as the parties raised no question of the validity of the contracts for transportation, or of their having been affected by subsequent legislation, the Commission will make none. It will, of course, be understood that it expressly avoids any intimation of opinion on that subject for the very sufficient reason that the case as presented does not, in the view of the Commission, call for any such opinion.

On the argument counsel for complainant presented a statement of facts expected to be proved on the hearing, prefacing it with his view of the effect of the contracts upon the matters in controversy, namely:

"The contracts pleaded by the defendant cover but two points on the subject of rates; (first) they provide that the whole product of complainant's mines shall be 'ransported to market by defendant, and they provide a maximum rate to

Hoboken; (second) they concede on behalf of the railroad, as to westbound traffic, the common law obligation of a carrier not to discriminate against the shipper, which is now, both in Pennsylvania and under the Act to regulate commerce, a statutory obligation."

The offer of proof covered all the facts set forth in the complaint, and went further into detail as to the policy and practices of the respondent whereby it succeeded in absorbing to itself and absolutely owning and controlling five-sixths of the total amount of anthracite coal transported over its lines. The excessive rates of the respondent it was asserted precluded complainant from having more than a limited market for his small sizes of coal, though respondent transports and markets its own small sizes to complainant's loss and damage. It was proposed to be shown that the discriminations of defendant as a common carrier in favor of itself as a miner, and against all other shippers of coal, tends to create a monopoly in its favor in the anthracite coal business along its lines; that such discrimination is destructive of the rights of property of complainant; also that there is a growing market for the smaller sizes of anthracite coal from which complainant is wholly shut out by the practices and policy of the defendant; also that there is a growing market for what are known as the commercial sizes of anthracite coal throughout the west from which the practices and policy of respondent shut out the complainant; also that the aggregate prices at which respondent sells its coal at specified northern and western points is less than the cost to complainant of mining his coal plus the open rate which is charged him for transportation to those points, and hence a most destructive competition is established against the complainant. This brief statement will be sufficient for the purpose of an understanding of what follows.

Upon this statement counsel for the complainant present certain points which they have argued with great force and earnestness, and each of which demands some attention at our hands.

First, it is said that so far as the complaint charges discrimination in rates upon shipments of small sizes—that is, upon buckwheat and culm—the matter is entirely outside of the contracts put in by respondent, for the reason that those sizes as marketable sizes of coal are products which, commercially speaking, have originated since the contracts were entered into—the contracts themselves being silent upon the rates for those sizes—and for the further reason that for the existence of those sizes at present in any considerable quantity, the recent policy and practices of the respondent are chargeable.

The matters of fact here asserted the complainant proposes to establish, but for the purposes of this case we are bound to say that we can not regard them of legal importance. We have carefully examined the contracts attached to the answer, and are all of opinion that they cover, and were evidently intended to cover, all shipments of coal by the complainant. Whether he had in view at that time these small sizes of coal as a marketable commodity which he might ship to Hoboken or other distant points, or whether they were then produced as marketable commodities by any one, we can not think are questions that can affect the construction of the contracts themselves. Their terms are as broad as they could well be made. They are to cover "all the coal" which the contracting parties of the first part were to mine and remove from their lands, and are not limited to coal of any particular sizes or to coal which was then marketable. If complainant relies upon these contracts we see no escape from the conclusion that he has by their terms precluded himself from raising the point which is now presented. The contracts, though they clearly imply both the existence of coal of smaller sizes than pea coal and that they are marketable commodities at Hoboken, make no distinction between them and coal of the common sizes, except as it excludes them from being taken into consideration when the price of transportation to Hoboken is to be determined. But that price is a price for the transportation "of all the coal" which complainant is to ship to that point, and he undertakes to pay it. He can not make an exception to the contract now because of subsequent facts

rendering it important, nor because the facts are such that he would unquestionably have insisted upon it at the time had he foreseen what was to occur. Nor can the policy or the misconduct of the respondent change the construction of the contracts. They may perhaps be such as to give to the complainant a right of action at law, but such an action would be founded on something outside the contracts, and would not at all relieve the complainant from the obligations he had assumed in entering into them.

This being our view of the contracts, and it appearing to us very clear that the complainant has thereby bound himself as to what the prices for the transportation of the coal to Hoboken shall be, and how determined, and that the reasons that governed the parties in fixing the terms of their contracts are not open to inquiry in this proceeding, which has not for its object the avoidance of the contracts, it follows as a necessary consequence that the complainant is not entitled to go into evidence called for by his motion, by which he proposed to establish the fact that for the transportation of these smaller sizes of coal to Hoboken the price ought to be something different than that fixed by the terms of the contract. All the evidence called for for that purpose, and all the witnesses proposed to be examined to that end, are made by the contract itself entirely immaterial. Nor is the suggestion that the respondent may not have rendered true statements, or full statements, or indeed any statements at all, for the purposes of fixing the prices of transportation to Hoboken according to the terms of the contracts, of any moment here whatever. If the fact is so there may be a remedy in the courts, but there is none here. If the rate of transportation were not fixed by contract we might have jurisdiction to determine what it ought to be, but when the contracts before us made by the parties themselves have undertaken to determine how the rates shall be fixed that matter is taken entirely out of our hands. We say this assuming all the while that the contracts are valid, just as the parties assume them to be, and expressing no opinion for ourselves on that point.

Second, it is said that, so far as the contracts pleaded by the defendant assume to fix the rates upon shipments of coal north and west, they were at the time the said contracts were made merely declarative of a general rule of law which was then part of the statutory law of the State of Pennsylvania, and has since become part of the statutory law of the United States, and the contracts can therefore in no wise affect the present controversy so far as those rates are concerned. In support of this position sections 3, 5, and 7 of article 18 of the Constitution of Pennsylvania of 1874, and also the Act of the Legislature of that State of June 4, 1883, forbidding unjust discriminations, are quoted; also the case of the Wabash, St. Louis & Pacific Railway Company *v.* Illinois, 118 U. S. 557, asserting the paramount authority of the United States government in matters of interstate commerce; also the cases of The Skinninggrove Iron Company *v.* The Northeastern Railway Company, 5 Ry. & Can. Traf. Cas. 244, decided by the English Commissioners; and of The Poughkeepsie Iron Company *v.* The New York Central & Hudson River Railroad Company *et al.*, 4 I. C. C. Rep. 195, recently decided by this Commission, from which the conclusion is deduced that when the carrier is also a producer, and especially on its own behalf, it is illegal for it to discriminate in its own favor as against other shippers.

It is further said, *thirdly*, that so far as the contracts pleaded by the respondent can in any respect be regarded as affecting this controversy they are to be read herein only as a tariff or a maximum rate sheet—the wrongs complained of being wrongs sustained by the complainant within and independently of such maximum rates, and being entirely aside from the contracts themselves. The case of the Aberdeen Commercial Co. *v.* The Great North of Scotland Railway Company, 3 Ry. & Can. Traf. Cas. 205, is supposed to cover this contention.

It is further, *fourthly*, said that the defendant can no more set up these contracts as a defense, when it is itself, as a common carrier, charged with wrong doing, than the complainant could plead the contracts for the purpose of enforcing as against the respondent a discrimination in his favor, and to

this Hurlburt *v.* Lake Shore & Michigan Southern Railway Company, 2 I. C. C. Rep. 122, and Bullard *v.* Northern Pacific Railroad Company, a recent Montana case, are cited.

It is further said, *fifthly*, that the respondent, as a common carrier of goods for hire, can no more discriminate against the complainant in favor of itself as a producer and shipper of coal than in favor of any other shipper. Discrimination by a carrier in its own favor is the worst form of discrimination, and is clearly within the mischiefs intended to be prevented by the Interstate Commerce Law. The case of Baxendale *v.* Great Western Railway Company, 1 Nev. & McN. 202, is cited; also Garton *v.* Bristol & Exeter Railway Company, 1 Nev. & McN. 218; Reynolds *v.* Western New York & Pennsylvania Railroad Company, 1 I. C. C. Rep. 393; Riddle, Dean & Co. *v.* Pittsburgh & Lake Erie Railroad Company, 1 I. C. C. Rep. 374; Riddle, Dean & Co. *v.* New York, Lake Erie & Western Railroad Company, 1 I. C. C. Rep. 594; Heck & Petree *v.* East Tennessee, Virginia & Georgia Railway Company, 1 I. C. C. Rep. 495, and others.

It is further contended, *sixthly*, that the defendant, being a common carrier for hire, and enjoying franchises from the public by reason thereof, cannot lawfully, under the peculiar circumstances and conditions under which the anthracite coal business is carried on, do business, in its capacity as a miner and shipper of coal, at a loss, or in such a way that an apparent loss in mining can result in an actual profit to the respondent only by the prostitution of its franchises as a common carrier. The case of Rice *v.* Western New York & Pennsylvania Railroad Company, 4 I. C. C. Rep. 131, recently decided by the Commission, is cited as bearing upon this contention.

All these points, from the second to the sixth inclusive, it is seen, elaborate and present in different forms the one main contention as regards shipments to the west and north under these contracts, that the respondent, as a common carrier of interstate traffic, being also a producer and purchaser and shipper on its own account, is by law precluded from unjust discrimination in its own favor; that any such unjust discrimination subjects it to the discipline of the Act to regulate

commerce, and brings it within the regulating power of this Commission. It is to this general contention that we shall now direct what we have to say.

We shall assume, in whatever will be said upon this case, that the underlying principle of complainant's contention is sound and just. The respondent is a common carrier, charged with duties to all who may present themselves for carriage or offer their property for that purpose; and one of the highest of these duties is that it shall not discriminate as between those thus offering. This we assume to be the obligation of the common law, and of the constitutional and statutory law of Pennsylvania as well. Whether by the contracts brought into the case there was discrimination as between the complainant and other persons, of which such other persons might find fault, is a question not before us and not in any way involved in this proceeding. We proceed, as already said, upon the assumption that the contracts were valid when made.

But we are confronted here with a situation that is peculiar, and elsewhere than in the coal regions of the country would be regarded as extraordinary. Respondent is not only a carrier for all other persons who may offer, and charged with duties of impartiality as such, but it is also itself a shipper over its own lines. It may be said to offer to itself property for transportation, and this not merely casually and for some temporary or special purpose, but regularly and as a very large part of its business. Indeed, it is probably true that respondent became a carrier because of having immense quantities of property to be carried, and that its line was constructed mainly for its own purposes as owner and shipper, the business of common carrier being added to that of producer and dealer in coal with a view to an additional profit or to lessen the cost of conducting the primary business. The situation is what creates the difficulty in dealing with the case. It presents the question of impartiality in such a manner that it may not be possible to deal with it as it would in general be dealt with if it were to arise as a question affecting rights as between third parties who were ship-

pers only. It might be easy to apply the rule against unjust discrimination in that case, while it might be difficult to call it a rule against unjust discrimination in this case. The right of the complaining party might be precisely the same in each case, and yet the situation might make the method of enforcement quite different, and might even require that a different term should be applied to the wrong from which the complainant suffered. No matter what the situation is, the respondent must not use its power and the means at its disposal as a carrier to avoid performing the full measure of its duty. It must not use them oppressively. It must, as far as possible, deal as between all shippers, including itself as a shipper, in such a way that all shall have proportional benefit whenever demanding its service.

But how is it to be determined whether the respondent discriminates as between itself as shipper and some third party shipping coal over its line? This is not the case of two artificial bodies, the one a coal company and the other a railroad company, both composed of the same persons and in absolutely the same interest, but it is the case of one artificial body carrying on two kinds of business. Complainant insists that in order to determine whether the respondent discriminates in its own favor in the matter of transportation it is necessary that an account should be kept as between itself as carrier and itself as a shipper of coal. This will enable other shippers and the public authorities to ascertain what the cost of transportation is, and thereby the proper charge for transportation against the respondent may be determined, which charge must not be exceeded for the carriage of coal for others. The respondent insists, on the other hand, that any such account would be mere book-keeping; that the results would be of no interest and no importance to the complainant; that it would not measure the charge to be made to him, for that is measured by the contract itself, which provides that he is to be charged what others are charged on the shipments to the north and west. But this, the complainant insists, would leave the respondent at liberty to discriminate at will as against him and others, and in fact to shut him entirely out of northern and western markets by the delivery

at such markets of its own coal for sale at prices below its charge for carriage.

It was not understood to be claimed by complainant or admitted by respondent at the argument that any account was now made by respondent of the cost of transportation of its own coal. Our understanding is that no such account is kept. The keeping of it, so far as respondent is concerned, if no interest of third parties were involved, would have no importance, except as it might enable it to determine at what price it could afford to offer its coal for sale in markets at a distance from the colliery; and the management might well suppose that for this purpose it was needless to its interests. We can very well understand that they might not care to be at the trouble and expense of such an accounting.

Can we oblige them to keep such an accounting if they have none now? What authority can we exercise for that purpose? It is not suggested that it would fall within our province to do so, except as it may be necessary to prevent unjust discrimination. But would it have any value to that end? The cost of the transportation of any one article of commerce over the line of a public railway can never be arrived at with anything like accuracy. If the carrier did but one kind of business, it might at the end of the year very easily average the cost as between the shipments by quantity; but this respondent carries persons and it carries an infinite variety of articles of property; sometimes thousands of these articles by a single train, sometimes only one article by the same train—this last being generally true when coal is transported. It is not possible to apportion either the interest, if any, upon its indebtedness, or the cost of maintenance of road and equipment, or the general cost of management, as between various branches of its business as carrier, so as to reach the proper proportion to be charged to each, with even an approach to accuracy. Such carriers endeavor to apportion the cost of passenger and freight service, but it is necessarily done very largely by estimates, and in some particulars by arbitrary allotments of items of expense, which may make an apportionment sufficient for its own purposes and to give the public some general idea of

what the cost is of the two branches of the service. But that is all. Should the attempt be made to make a similar apportionment as between the various kinds of freight carried, the elements of uncertainty that would necessarily be dealt with would increase and multiply at every step. If the carrier desired to make the cost of any particular traffic appear large or appear small, it would not be difficult to swell it or to lessen it by such figures as would appear perhaps equally plausible in each case, but which, nevertheless, would not be such in either case as ought to determine the rights of third persons.

We shall be compelled to say, therefore, that if this carrier were required to keep such an account as the complainant insists it ought to keep, it would necessarily be one that could not be relied upon as absolutely or even approximately accurate, because accuracy is not predicable of it. We must say further, that, if the account could be once made out under the direction of this Commission upon a basis that would be satisfactory to both parties to this controversy, it would still be necessary in order to keep it so that the Commission should assume and exercise continuous supervision thereafter of the making up of the subsequent accounts, determine the items that should go into them, see to the apportionment of cost as between all the various kinds of traffic—in short, to assume general supervision of the respondent's books so far as they showed its financial transactions, since nothing short of this could render it impracticable for the respondent to so manage its accounts and apportionments as to accomplish deception and effect the very purpose which the making of the account is intended to preclude.

This Commission cannot order any such account to be kept. First, it has not the power. Second, if it had, it would be impracticable when its own duties in other directions are considered. Third, it would be useless if done. It could form no safe guide in determining whether the respondent did or did not use its power as a carrier oppressively.

But, on the other hand, when the respondent says that the contract fixes what should be paid by complainant for ship-

ments to the north and west, we think the statement is inaccurate. Complainant is at liberty to ship his coal to such points and places north and west as he shall desire, upon the same terms and conditions as respondent for the time being transports coal for other parties. That is his right. Now, respondent says that it has certain definite rates fixed and published for the transportation of coal north and west, and, in substance, that it has a right to charge those rates for the transportation of complainant's coal. Complainant says that those rates are prohibitive; that it is impossible that he should do business under them; and the intimation is that they are made prohibitive purposely, that the respondent may transport its own coal to the markets north and west and sell it below the published rates of transportation; and these rates are further asserted to be unjust and unreasonable.

It is in our opinion no answer for the respondent to say that the rates as published are such as are charged to third persons. Any third person has a right to complain of these rates as unjust, oppressive and unreasonable, and if such a complaint were to be brought to the attention of this Commission, it must be inquired into, and if the rates were found to be as charged, it must order that they be reduced. The complainant would have the benefit of that reduction, just as much as the complaining party would; but complainant has the same right to arraign the rates as being unreasonable that any other person has, and he would have this right if there were no other shipper to the north and west over respondent's road. The complainant makes that complaint here, and he is entitled, as we think, to a hearing upon it.

The question, then, as between the complainant and the respondent in this case should rather be called a question of reasonable rates than a question of unjust discrimination, for the reason that, as already shown, there is, from the very nature of the case and because of the situation—the respondent being both carrier and shipper—a situation that we must now assume we can in no wise change or alter, an absolute impossibility of applying any definite rule whereby unjust discrimination can be determined. Complainant is entitled to reasonable rates on all shipments, where he has not agreed

upon a rule for determining the amount, as he has on those to Hoboken; and what are reasonable rates is to be determined in view of all the circumstances of the case. The rule of evidence for this purpose ought to be an exceedingly liberal one, and all those circumstances which the carrier may properly take into account, in order to determine at what it could afford to carry this species of traffic, or what it would be politic to charge, ought to be considered.

It would be out of place for us, in these preliminary proceedings, to undertake to point out in detail what facts might be shown when that question is gone into. In fact, counsel need no intimation from us for that purpose. They understand very well what they are entitled to show upon a question of this kind. But it may not be improper to say now that, among the facts to be taken into account, may very well be the market value of the coal at the colliery, and the market value, or at least what the coal is sold for, at the points to which the complainant desires to ship—Syracuse, Buffalo or any other. And what respondent sells for at those points is clearly admissible, we think, when the question of value is under consideration, and also as having some bearing upon the question of reasonable rates. The transportation cost will be assumed to be the same whether the coal carried be respondent's own coal or complainant's coal. It is probable, at least, that respondent does not sell its coal in distant markets without realizing some profit both upon the mining and the transportation. If, in its capacity as dealer, it establishes a price in some market, the question may at least be discussed whether it does not thereby furnish a basis by which a reasonable rate for other dealers may be arrived at; whether it does not fix a maximum of the charge it can make to others. However that may be, the extent of its own profits upon coal marketed, compared with the rate it charges other dealers for transportation, or whether it makes any profit at all, may well be inquired into by any tribunal authorized to pass upon the reasonableness of rates.

By its motion for subpœnas *duces tecum* complainant is understood to desire to obtain, as instruments of evidence, among other things, certain contracts for the sale of coal

made between respondent and third parties. If such contracts were put in evidence they might show, perhaps, what respondent is receiving for its coal at some of the points of delivery. But that is a fact that it is entirely competent to prove by any person in respondent's service who knows the facts, and also by any third party, purchaser or otherwise, who may know the facts. But we do not think complainant is entitled to call for the contracts themselves for this purpose. Third persons have rights in such contracts. They would have a right to object to the contracts being produced if they themselves were present before us at the hearing, but they can certainly lose no rights by reason of being strangers to the proceedings and not present. There may, for aught we know, be matters in their contracts with which neither this complainant nor any other individual of the public has any concern whatever or any business to inquire into. We do not know that such is the case, but we do know that for the purpose of ascertaining the selling price of coal it is not necessary that the production of the contracts be required, and also, as has been said, that parties interested in them, and who are not here to consent to their being produced, might rightfully object if they were here.

This seems to us to be all that it is necessary should be said at this time in regard to the motions that have been made. Without passing specifically upon the application for subpœnas *duces tecum*, we think it advisable that no such subpœnas should now be issued. Some that have been asked for could not be issued for the reason above assigned. So far, also, as they seek to obtain an accounting in respect to eastern shipments, the subpœnas should not be granted for the reason that no such accounting could be had here. It must be had, if at all, in the courts. In respect to the reasonableness of rates upon shipments to the north and west, we think it advisable that the testimony be taken in the ordinary way, and when the time comes for taking it the respondent will be expected to produce for the purposes of examination any books or papers of its own that may seem to be relevant and that may properly be called for, but it should not be required to make exhibit of any dealings with

third persons, unless their bearing upon the controversy is manifest. If a long examination of books and papers is probable, it might be well, perhaps, if the parties should agree upon the taking of the testimony before a commissioner. It might prove a saving of time and labor to them as well as to the Commission.

The motion for the dismissal of the complaint must be denied, as the complainant, we think, sets forth sufficiently a good ground of complaint in respect to northern and western shipments. The decision as made will very much narrow the scope of the investigation, since it will necessarily exclude whatever belongs under the contracts to the judicial tribunals.

FOURTH ANNUAL REPORT

OF THE

INTERSTATE COMMERCE COMMISSION.

OFFICE OF THE INTERSTATE COMMERCE COMMISSION,
WASHINGTON, D. C., November 29, 1890.

To the Senate and House of Representatives:

The Interstate Commerce Commission has the honor to submit its fourth annual report, as follows:

WORK OF THE COMMISSION FOR THE YEAR.

Since the transmission of its last annual report to Congress the Commission, in addition to its regular sessions in Washington, where much the greater portion of complaints are heard, and where the general administrative work is done, has held special sessions, made investigations, or taken testimony, by one or more of its members, at Boston, Mass., New York, N. Y., Baltimore, Md., Newport News, Va., Chattanooga, Tenn., Chicago and Peoria, Ill., Sioux City, Iowa, St. Louis and Kansas City, Mo., Omaha, Kearney and Lincoln, Neb., Topeka, Kan., Denver, Colo., and Salt Lake City, Utah.

The names and compensation of all employees, together with a statement of appropriation and expenditures, will be found in Appendix A.

An abstract of the points decided by the Commission in such controversies as have assumed formal shape and been disposed of during the year upon arguments presented will be found in Appendix B, hereto attached. These controversies represent but a small portion of the work of the Commission, the major part of which ends with correspondence

or with bringing managing officers and complaining patrons together for consideration and discussion of controverted points and for advice upon them. Those who at first were inclined to operate upon public opinion, with a view to the possible repeal of the law, by showing that it was oppressive to the carriers or to localities or sections of the country, or by the assignment of other reasons which might seem to justify a repeal, appear for the most part to have abandoned that course of action and to have accepted the existing legislation as likely, either in its present or in some modified form, to continue a part of the permanent policy of the country. To outward appearances, therefore, the law has seemed in the main to have been observed; and no doubt this has been the case with very many of its important provisions, to as great an extent, at least, as was to be expected of any new law which should undertake the regulation of so immense a business. In respect to those provisions, however, which require the publication of rates and their filing with the Commission, there has been in some quarters very great carelessness, to say the least. The Commission has found indications, especially when wars in passenger rates were in progress, that rates were changed without the necessary previous notice, and that in many cases such posting of rates as the law requires to be made was not made at all. The public were left to inquire of agents what the rates were, and there was reason to believe that in some cases this was purposely done with a view to give opportunity for secret and illegal dealing on the part of ticket agents with the class of persons commonly called scalpers. The attention of the railway associations was called to this subject with good results, but all their efforts were insufficient to break up entirely the class of dealings referred to. A state of things for a time during the present year existed at Cincinnati which was greatly discreditable to the authorities of the roads terminating at that city. Nearly all the abuses that the law seeks to prevent were indulged in to a greater or less extent, and agents went so far as to justify them as being made necessary by the stress of competition.

This is only one of the most noticeable instances which

have occurred of general disregard of the law at some particular locality. There is every reason to believe that the provisions which were intended to preserve uniformity of rates and prevent unjust discriminations have been very directly disobeyed or evaded in a great number of cases, and in all sections of the country when competition between the carriers was active and severe, and not held in restraint by the railway associations. It would, perhaps, be too much to say that this was most commonly done in secrecy, for the facts have been such that in most cases the illegal conduct of one carrier has been so open and demonstrative that its rivals have been perfectly aware of it, and has been the subject of contention, perhaps of negotiation between them, each attempting to justify its own action by recrimination, and all, perhaps, in the end, coming to some understanding that the law should be obeyed in the future, but with no certainty that the understanding would be observed beyond the time when strong temptation, induced by seeming opportunity for profit at the expense of others, or by a belief that others were proving faithless to the agreement, should invite a breach. It is matter of public notoriety that such understandings are not observed, nor even nominally respected, by the parties to them, and so far has this loose sense of business probity been carried, that associations formed with much care, and doubtless in good faith on the part of their originators, with the avowed purpose of making the enforcement of the law one of their leading objects, have failed of their purpose, and the members eventually felt constrained to openly admit that the law was persistently disobeyed by them. These associations are mere voluntary organizations, it is true, with no legal power to enforce their rules nor to inflict punishments for breaches of their agreements. There are no less than sixty-eight associations in this country for various traffic and transportation purposes, and while doubtless they are useful in many ways, and have in view many laudable purposes, their combined efforts exert little if any influence upon the action of carriers in the prevention of rate wars, secret concessions in rates, and other demoralizing practices.

But the most important provisions of the law have not

so often been directly violated as they have been nullified through devices carefully framed with legal assistance, with a view to this very end, and in the belief that when brought to legal test the device hit upon would not be held by the courts to be so distinctly opposed to the terms of the law as to be criminally punishable. Some of these will be more particularly referred to further on.

When the question arises, as it often must, why obedience to the law is not more completely secured, it is in part answered by the very magnitude of the country and of its enormous railway mileage, equal to many times that of any other country and considerably exceeding that of all Europe combined.

The railway mileage of this country in round numbers is about 160,000 miles. The number of railway employees exceeds 700,000, and adding to these the number connected with railroad transportation in various capacities, such as officials of roads, officers and employees of associations, traffic solicitors, legal advisers, and others, the aggregate is not far from a million, or nearly one-twelfth of the adult male population of the country. The business done includes the carriage of 540,000,000 tons of freight and 472,000,000 of passengers. The enormous extent of the subject matters of regulation is shown by these statements. Any criticism upon the efficiency of regulation would obviously be defective if it failed to take note of the vast number of persons and the extent of the business to be regulated. The extent of the country is also of vast importance. Railway regulation in a small and compact country, where all the carriers are easily kept under observation, and where the circumstances of carriage in all parts are substantially alike, is a small matter compared with the regulation in a country so extensive as this, where the transportation is subject to such variety of circumstance and where differences in conditions of carriage in the different sections are so striking and so peculiar. That which may be a simple task to a regulating commission in any other country is obviously a far more complicated and difficult undertaking in the United States, and one that calls for ceaseless exercise of vigilance and exacting labor. A commission in this country has a field of jurisdiction of enor-

mous extent, necessarily giving rise to a great variety of duties demanding daily attention. Matters of importance frequently require prompt action in various parts of the country at the same time. A performance of such imperative duties as to make investigations, to keep watch over the filing and publication of tariffs, to examine and revise classification and rates, to collect and tabulate statistics, and to prepare decisions upon controverted questions, leaves little if any opportunity for the commissioners personally to do more than to lay down general rules for the regulation of the business under the law. Prosecution of offenders for violations of the law are undoubtedly necessary and important means for the effectual enforcement of its provisions, and several prosecutions of this character have been instituted and carried on at the instance of the Commission. But the enforcement of the rules laid down, and especially of the penal provisions of the statute, must largely be left to the parties injured by their violations, or to the public authorities in the sections where the violations occur. Had the Commission the power, which has been asked for heretofore, to make and conduct investigations through agents clothed with the authority to call for the records and papers of the carriers when the published rates are believed not to be observed, or when in any other particular there is reason to suspect that the law is being disobeyed, it would then have in its hands a means of enforcement which at this time does not exist. The need of these auxiliary administrative agencies to act under the direction of the Commission and carry on certain portions of the work simultaneously at various places has long been felt, and would evidently greatly facilitate the work of regulation and add to its utility. At present all such investigations must be conducted by the Commissioners in person, and the demands upon their time and attention are such that it is often necessary to employ temporary assistance for preliminary inquiry into the facts upon which complaints are founded, that, under the law, must be acted on by the courts. Were the agents provided according to the recommendation heretofore made, it would be possible, by their assistance, to conduct examinations wherever

necessity seemed to require them; and it can scarcely be doubted that the very appointment would of itself have an important influence in securing obedience to the law.

In part, also, the question is answered by the differences existing in the legislation of the United States and of the several States of the Union on the subject of regulation of railways. These differences will continue to be a source of more or less embarrassment and difficulty until they shall finally be removed by Congress taking to itself all the jurisdiction it has of the subject of transportation by rail, and by the several States bringing their legislation into harmony with the Act to regulate commerce, as was recommended at a conference of State railway authorities held at the rooms of the Commission in April last. Some of the most open and glaring violations of the law now take place under the supposed shelter of State authority, or the absence of any legislation in the State which undertakes to make it illegal. This is especially the case with the provisions of law intended to prevent unjust discrimination in the transportation of persons by rail; the giving of free transportation, except as expressly allowed by law, while the public generally are charged for carriage, being not only illegal but criminal. The penalties are evaded by carefully limiting the instruments for free transportation within the bounds of a single State, and the national law is supposed to be thus set at naught with impunity, and the glaring mischiefs which it was intended to prevent are perpetuated. This is but one of many illustrations that might be given of making the want of distinct penal provisions in the State law a means of evading the penalties of the national law by carriers who are subject to its provisions, and who, in the very cases in which they grant discriminating favors to individuals, are doing so with a view to gain some favor or advantage in interstate commerce.

If the effort is made to enforce the law by penal prosecutions it is commonly found that the difficulty of making proof is quite beyond what is encountered in other cases of criminal violations of law. The Act to regulate commerce is perhaps most often disregarded in the giving of rebates, or the granting of special rates for the transportation of property

of large shippers. The rivals of a carrier who does this are likely to have at least such proof as convinces them of the fact, even when they do not possess positive legal evidence, and very often they have such proof as would be convincing if presented in court. Low rates affect market values, and if one dealer is found regularly disposing of market products below what others can afford, the presumption that he is enabled to do this through being given special favors in transportation may lead to an investigation by the parties concerned, which puts the fact beyond question. It might be inferred that in such a case the carrier whose business was injuriously affected by the cut in rates, or by some rebate equivalent thereto allowed by its rival, would be ready and anxious to place the facts immediately before the public authorities with a view to prosecution, and would do all in its power to bring the offender to justice. Its interest, it might be thought, would be sufficient to impel it to this course of action. Such, however, is found not to be the case. A carrier injured is much more likely to resort to retaliation in kind than to assist in prosecution; and the Commission has found it practically impossible to obtain the assistance of one carrier in bringing another to justice for such misconduct. The reasons for the unwillingness to give aid in such cases are not commonly avowed, but some of them may, without much likelihood of error, be conjectured. It is probable that very few carriers feel themselves entirely secure in the matter of the observance of the law, and for that reason, if for no other, they may not be disposed to challenge their rivals to a contest in the courts with the penal provisions in view. But if this were otherwise the appearance of a carrier as prosecutor of another, or as standing behind the prosecution to furnish the means of conviction, is well understood to be likely to incite against it the ill-will of some portion, at least, of the business community, and thereby affect unfavorably their disposition to patronize it. This is especially the case when the prosecution is instituted for the giving of low rates, for, even when this is done unjustly and illegally, it, nevertheless, will have, or seem to have, the effect of favoring localities or important interests, and thereby it secures their

approval and invites their support. A carrier who, under such circumstances, prosecutes, or who aids a prosecution, does so at the risk, not merely of submitting itself to such annoyances and expense as commonly attend a criminal proceeding, but also of appearing in the eyes of an influential portion of those for whose favor all are competing, as the prosecutors of a rival whose real offense, whatever it may be nominally, consists in the fact that in the struggle for business it has been the more successful of the two, and for the commendable reason, if lawfully done, that it has conceded more to the demands of competition and been less severe in its exactions. The risk of arousing against themselves a prejudice of this nature is one which the experience of the Commission shows the carriers are very slow to encounter. It might, and probably would, be otherwise if they had reason to believe that the prosecution of delinquents could be carried on with the hearty and undivided support of the business community which ought to be given it.

The feeling among managers of roads on this subject is very well shown by an extract from a letter of a general manager of one of the roads terminating in Chicago, who, in response to a letter from the Commission upon this subject, writes as follows:

> Referring to your complaint against railroad officials that they admit, state, and charge that the published rates are cut in violation of law, while at the same time fail and refuse to give any evidence to the Commission, I beg to say it is true that we do make such charges and have information about such cut rates that warrants us in making them; still we dare not use it with the Commission or in court. The transportation of this country is handled by a comparatively small number of persons who are all interested in getting the lowest rates possible and the greatest advantage over their competitors. These shippers we must depend upon for business, and if any railroad company or any railroad officials should go into court or before the Commission with charges that such shippers are receiving favors from other railroad companies, it would result in that railroad company or the company represented by such officials being boycotted by the majority of the shippers. In other words they do not want the law enforced so long as they get an advantage in its violation. The * * * Railroad Company and its officers desire that the Interstate Commerce Law be enforced, but for reasons above given we dare not use the information we receive in various ways as to what is being done by our competitors and connections. Of course this informa-

tion is not in the nature of absolute proof, but is in the nature of prices paid for commodities and the direction that traffic takes, which is not its natural channel. In some cases shippers state frankly that they are getting concessions, but of course do not divulge just how much, nor how it is done; and even were we disposed to use the information we get, I do not know that it would be competent evidence.

If carriers will not assist in prosecuting their rivals, still less is it to be expected that they will voluntarily furnish evidence against themselves when the acts with which they are accused are criminal in their nature. They claim that the law itself excuses the citizen from furnishing evidence of criminal misconduct against himself, and that as officers, as well as the agents, who are actors in illegal transactions are generally so circumstanced that if called into court to give evidence they would be excused from testifying, they must be expected to decline to testify, or even to furnish desired information, when asked for the facts out of court. The proof, therefore, upon which convictions must be based must in most cases come from parties not engaged in railroad service, since the persons who have been favored by discrimination or by illegal conduct are not likely to give the facts to the public. The difficulty of obtaining direct evidence from parties who, by means of participation in the acts, have such knowledge of the particulars of the illegal transactions as to be able to testify to them is invariably very great, and circumstantial evidence must in many cases constitute the chief reliance. But circumstantial evidence, though it may be sufficient to show the illegal conduct of the carrier to a moral certainty, may yet fall short of such legal proof as will insure conviction of any agent or officer.

PRACTICAL WORKINGS OF REGULATION.

Among the cases acted on by the Commission in which, in the due enforcement of the law, it became necessary to invoke the aid of the courts, was one which well illustrates the embarrassments arising from a plan of administration under which questions of fact, involving so many considerations as the inquiries whether particular rates are or are not

under the condemnation of the law, are open to review in the courts upon the facts and upon original testimony taken under technical rules of evidence instead of giving conclusive effect to findings of fact by the Commission when the proceedings before that body have been regular and there are facts to support the findings.

A complaint was made by one railroad company against another railroad company for an alleged unlawful sale of tickets at reduced rates, known as party-rate tickets, being tickets for transportation in one direction only to parties of more than one person, and the reduced rates being founded on the number of persons in the party. The case was regularly heard upon complaint, and answer filed and appearance of the parties represented by counsel, the taking of testimony and argument of counsel, and final submission of the questions. A report was made, pursuant to the statute, setting forth findings of fact and conclusions of law. It was found as a fact that one-way party-rate tickets were known and used before and at the time of the passage of the Act to regulate commerce, and that they were a style or variety of tickets differing from excursion, commutation and mileage tickets, and because of such difference could not be included in the exceptions named in the statute. The application of the elementary rule of construction of statutes, that the enumeration of specified exceptions from the general rule that the statute lays down must be held to embrace all that the legislature intended to except, made the conclusion inevitable that other cases, though bearing some features of resemblance to those named, could not be added to the exceptions, but were intended to be prohibited. The Commission so ruled and issued its order accordingly.

The defendant company, without taking any steps for review, or making any assignment of error in the findings, simply disregarded the findings of the Commission and disobeyed the order. The Commission then found itself obliged to institute a proceeding in a circuit court of the United States to compel obedience to its order. In this proceeding, although the statute makes the findings of fact by the Commission *prima facie* evidence for judicial purposes, the court

gave no weight to the findings, but took original testimony, which tended, however, to support rather than to impair the findings, and in disposing of the case reached the conclusion, by judicial construction rather than as a determination of fact, and influenced, as appears, by the supposed analogy of some English decisions, that reduced party-rate tickets belonged to a class or genus of which commutation tickets formed one variety, and are therefore within the spirit of the exceptions specified in the Act. The ruling of the Commission was therefore annulled.

The inadequacy of a scheme of regulation under which such results may be common is entirely manifest. One of its elements of embarrassment is the uncertainty and delay that must attend the administrative action of the Commission. If a carrier can simply ignore the findings of the Commission and wait for a new trial in the courts upon different testimony, in a proceeding to be instituted and carried on by the Commission, there can be no certainty upon any administrative question until the judgment of the court of last resort shall be pronounced, and the delay alone substantially defeats the remedy. This is fatal to effective regulation. The remedial procedure should be in a measure summary, and there must be finality, so far as facts are concerned, in the action of some tribunal, leaving only questions of law for review, and these at the instance of the party claiming to be aggrieved. A procedure of this nature would be in harmony with the general policy of the law that the facts, as found by the primary body that hears the testimony and sees the witnesses, shall be final for purposes of justice and for appellate review. Pursuant to this principle, and to facilitate the disposition of controversies, verdicts of juries, not merely in cases concerning property rights but in capital cases, findings of referees and arbitrators, by commissioners to condemn lands for public uses, valuations of property by taxing officers, awards of various Government officials acting under statutory authority, are as a rule final as to facts, unless vitiated by some error of jurisdiction or irregularity in the proceedings. It is of course possible that erroneous findings may sometimes be made by the Commission, but in all such

cases corrections are feasible, on proper showing, by the Commission itself. Moreover, error is predicable of any tribunal, and the probabilities of error upon questions of fact are not diminished by the remoteness of the final tribunal from the forum in which those questions are originally litigated.

Another serious element of embarrassment is the hindrance to any consistent and uniform policy of regulation resulting from the action of the courts upon purely administrative questions involving mainly matters of fact and presented, as they necessarily must be, as one independent feature, without its relations to the whole connected and complicated system of transportation. Some of the consequences of such action are further illustrated by the rulings of the court in the case to which reference has been made. One of these is that a railroad, under the court's interpretation of the statute, is not subject to the rule of equality in establishing passenger rates, but may make as many party passenger rates as there are parties who wish to travel, and a different rate for every party, according to its numbers. Another is that the only passenger rates that are subject to the law are for single passengers, and that ticket brokerage for party-rate transportation will enjoy a great accretion of business. Still another is that if the same principle is applied to freight transportation the largest shipper of any commodity can drive all competitors out of the market, and that absolute monopoly of any article of commerce can be created by carriers for one shipper or dealer. It is the understanding of the Commission that the law has for its leading object the prevention of such injustice and wrong, and an appeal has accordingly been taken from the circuit court decision to the Supreme Court of the United States, where the cause has been advanced for hearing at an early day.

The case described is not referred to because of its exceptional importance, but because as an actual occurrence it illustrates what may happen in many cases. This possibility reveals the defects of a system of regulation with only powers of inquiry and recommendation in the regulating body, and leads to a consideration of the functions proper for a com-

mission as the tribunal of first instance, and for the courts as the reviewing tribunals, to secure efficient regulation.

JUDICIAL AND ADMINISTRATIVE QUESTIONS.

When the question of the observance of the law is up for consideration, it is to be remembered that the Commission is without power to enforce its own orders or to punish their violation. The enforcement of its orders must, therefore, depend upon the disposition of the carriers to act in harmony with it, or upon the force of an approving public sentiment, or upon such proceedings as parties interested or the public authorities may institute in the courts. In a majority of cases the carriers have acquiesced in the decisions without objection. In some few they have delayed for a time, and then have yielded obedience, and in some instances have awaited prosecution. One cause for delay of obedience which has taken place is no doubt to be found in the fact that a belief prevails quite extensively among the carriers that no matter what may be the decision made by the Commission, or the nature of the case it has passed upon, the courts may review its conclusions. This not only tends very largely to embarrass the Commission in the action taken, but also to incline the carriers to take risks which otherwise they might be careful to avoid. They are encouraged in this course by some decisions of courts of first instance, which have somewhat hastily assumed that all questions arising under the Act to regulate commerce must necessarily be questions of law, and, therefore, that the proper tribunals to decide conclusively upon them must be those which are invested with judicial power under the Constitution. Where such an idea prevails, it is very likely to be assumed that the action of the Commission in acquiring jurisdiction of the cases over which it is given authority may be tested by such technical rules as are applied to inferior judicial tribunals, and that the carrier must not merely have full opportunity for hearing and for making defense when its conduct is called in question, but that it must be proceeded against when questions of administration are in issue precisely as it would be if charged with criminal conduct and arraigned upon an

indictment. That the influence of this belief upon cases passed upon by the Commission is unfortunate can scarcely be questioned. It is of course always possible that a complaint brought before the Commission for its judgment will present questions which are purely questions of law; and it is not disputed that in all such cases the decisions made must necessarily be open, and ought to be open, for judicial investigation afterwards. A case of this nature was presented shortly after the organization of the Commission, the question being whether corporations doing an express business, and other corporations engaged in transportation by rail, but not expressly named in the Act to regulate commerce and therein declared to be embraced by its provisions, were in fact embraced by implication so as to be subject to regulation by the Commission. It is very clear that no parties can, in respect to their business, be legally brought under the supervision and control of a special regulating tribunal without authority of law delegated for the purpose, and had the Commission reached the conclusion that these corporations because of being auxiliary to the carriers named in the Act were by implication embraced within its provisions, and therefore subject to the regulation provided for, there could be no doubt that the matter would be open to judicial inquiry afterwards to the same extent as if no decision had been made. This is for the obvious reason that no tribunal can draw to itself a jurisdiction not conferred, by simply deciding that it possesses jurisdiction. Nor can it be doubted, as against the carriers who were expressly named in the Act, that questions may often arise which are purely judicial in their nature; questions, for example, of the proper construction of contracts, or of damages under contracts, or of the title to property, or of the right in some other than the owner to make use of property against the owner's will, either by contract or under special provisions of law. Such questions will commonly arise collaterally, but the manner in which they are presented is immaterial; if in point of fact they are judicial questions, no decision upon them by an administrative tribunal can be conclusive. When, however, the questions passed upon by the Commission are purely administra-

tive, it seems equally plain that the conclusions should be a finality, even though their enforcement may require judicial aid. It is neither consistent with the ordinary jurisdiction of courts that they should take up the questions for original consideration when they are purely administrative, nor could their doing so be made to harmonize with the purposes of the law. Indeed, if the courts might be appealed to to consider the questions anew, the very delay that must attend a contest over them in the courts would almost necessarily be such as to make any attempt to enforce the law of very little value. The proposition, therefore, that administrative decisions should carry no more than a *prima facie* authority, is as mischievous in practice as it is erroneous in principle.

A very common assumption by parties connected with railroad service is that the question of reasonableness of rates is one of law, and therefore that the decisions of the Commission must, at all times when rates are involved, be subject to review. In some cases the carriers decided against have for a considerable period manifested a purpose not to obey an order of the Commission reducing rates, claiming to have the advice of counsel that the action of the Commission was not conclusive, and that they might safely await the determination of the courts in the premises. If they have finally acquiesced in the reduction, they have in some cases taken pains to have it understood that in doing so they were acting from motives of policy rather than because of any legal obligation which required it. But in order that the question of rates should be one of law it must be essential that there be some clear and definite rules whereby rates can be made; rules obligatory upon the carriers as well as upon the tribunals that regulate them, and which may be enforced against the carriers as well as in their favor.

If such rules existed, stockholders might have them enforced as against the action of the directors, or other officers, in fixing the rates, and the courts in the light of reason and authority, could deal with and apply them without at all entering upon the field of discretion and business policy. But every person familiar with the subject of transportation by rail is perfectly aware that there are no such rules. No

managing officer claims that they exist, and not one undertakes to regulate his action in the determination of rates by fixed, definite, unchangeable principles such as constitute rules of law. On the contrary, every step leading to the establishment of the rates that shall be charged for transportation begins and ends in the exercise of discretionary authority. Rates are never measured exclusively by the weight of the articles carried, or by bulk, or by the cost to the carrier of transporting them, or by the value to the owner in having them transported; and if all of these and other considerations bearing upon the subject are taken into account in the determination of rates, as they habitually are, there is no rule by which it can be determined how much importance should be attached to any one, or any combination of them.

The first step toward the imposition of rates for the transportation of merchandise is a classification of the articles which, it is supposed, may be offered for carriage, and the arranging of them into classes which are to bear different rates. In making this classification all the considerations that can properly bear upon it are supposed to be taken into account, and they are severally given such weight as the carrier believes it is proper to allow them under all the circumstances attending its own business, and all the business of the section, or of the interests that are served by his road. An important question always is, what is the probable cost of the carriage of the articles severally, and each is expected to be so classed that the rate it would bear would be such as to cover this cost and also to afford some profit to the carrier. But this is only a general rule. There are many cases in which property may be expected to be offered for transportation, the weight of which, or the bulk, is so out of proportion to its value that it can not possibly, if considered by itself, bear such charges for transportation as will leave any profit to the carrier, and must consequently be carried at a rate that falls below the point of fair profit or not be carried at all.

This well-known fact has led to the common saying that no traffic must be charged greater rates than it can bear—a

saying intended to indicate the maximum, though often understood in quite an opposite sense. It is therefore found that in every classification many articles are so classified that the rates upon them will give to the carrier but very slight profit, and if the carrier were deliberately to refuse altogether to transport them the refusal might doubtless in some cases be justified if its own interest were exclusively to be considered. But the considerations that determine the classification in such a case look beyond the particular article, and relieve what would be an oppressive and perhaps prohibitory burden by imposing some portion thereof upon other articles that can better afford to bear it. In every classification, therefore, articles whose value is very great in proportion to the bulk or weight are classed high in the expectation that the rates imposed upon them will pay not merely the cost of transportation and a fair profit to the carrier, but will contribute also toward adequate remuneration for the transportation of such articles as can not bear proportionate charges. Thus the cost of carriage to the carrier itself is no more a controlling consideration than is the value of the carriage to the owner of the property, and when both are taken into account questions of a public character also have weight, inasmuch as it is important to make a great public agency reasonably profitable to its owners, and at the same time as useful as may be to the general public.

This method of classification has been so long continued and so universal that every well-informed person in a community understands that made, as it is, for the purposes of rating it is based upon an almost infinite variety of circumstances, having regard not merely to the interests of the carrier and the value of his services, but also to the interests of the parties and sections served, and to considerations which may change from day to day so as to demand a change in the proportionate rating. Heretofore, as has been elsewhere shown, the classifications have been different in different parts of the country as they still are to some extent. But however they may have differed they have always been constructed under the exercise of a discretionary authority, and to the extent that they are now brought into harmony, it has

been done in recognition of a general public policy with which the interests of the carriers, as well as the sections of the country they serve, must be made to harmonize.

If any court were to undertake to pass upon a question of reasonable rates as one of law it would be necessary to begin with this classification. It would be compelled to enter upon all the infinite variety of circumstances which influence the action of the carriers when they make it. It would necessarily undertake to give the proper force to each of those considerations, though it could only do this upon the discovery of some positive rule or rules of action leading it up to definite conclusions, such as no railroad manager and no public officer ever invested with authority of regulation has as yet been able to discover. A mere statement of the case shows how impossible it is that a question of classification should be one of law.

If all carriers were under obligation to grade their rates to the cost or value of their own services exclusively there would be more ground for contending that the courts might deal with the question of reasonable rates. There would then at least be some elements approaching certainty by which the courts could be guided. If the cost could be ascertained the court could apply the rule; its discretion in such cases being measured only by its judgment whether the carrier had or had not added to the cost too large a margin for profit. But a rule that should thus measure charges by cost would work an entire revolution in the business of transportation, since it would no longer be practicable to make articles whose value was great in proportion to bulk or weight aid in the transportation of articles of a different nature, and the carrier would be compelled to demand upon the traffic in heavy and bulky articles such compensation as in many cases the traffic could not possibly bear. The long-haul commerce in some of the most important articles now transported for great distances would under such a requirement cease altogether, to the great detriment of the country at large, and with the probable result that many of the carriers now usefully serving the country and in a prosperous condition would be seriously crippled. Nothing more disastrous to the commerce of the

country could possibly happen than to require the rating for railroad transportation to be fixed exclusively by this one rule. But the consequences would be similar if any other single test of a carrier's charges were to be applied; and if any two or three combined were made use of the probability of injury to the country and of disaster to the roads would be only a little farther removed. The carriers are entirely right in assuming, as they have done heretofore, that they best perform their duty to the public when they take into consideration in making their classification and in fixing their rates, not merely the question of cost to themselves and of value to the owner of the property carried, but every consideration of a public nature which can fairly bear upon the question of public usefulness. The whole subject is so exclusively one of discretion with the railroad managers and the officers of associations who are brought directly in contact with the business itself, and with the people whom they serve, that they are not expected to defer to legal counsel upon questions of classification, but would assume that such a question was one altogether aside from his proper province, and would be much more likely to consult with the merchants or manufacturers, or others who are to be the chief patrons of their roads, than with one whose business was to deal with legal questions and not with questions of discretion and of purely business judgment.

When classification is made in the way explained, it is very obvious that the rate imposed upon any single article of commerce, if it is challenged as unjust, can not be taken up by itself and its reasonableness determined without regard to what is charged upon other articles which are subject to transportation by the same carrier. No article is rated independently. No one article is rated from considerations that pertain to itself alone; and to determine whether the rate is reasonable it is necessary in every instance to go beyond the single article and consider the whole subject of classification and the whole business of the carrier under it. To challenge the charge for the carriage of a single article is to challenge to some extent the whole rate sheet, and calls for careful consideration of the question whether the rate to be charged to the

one article is out of just proportion when all the circumstances and conditions which the railway officers must be supposed to have had in mind in making the classification and the rating are considered. Even the matter of cost may involve very many matters of mere discretion; questions of economy or extravagance in the establishment of agencies and the payment of commissions and salaries, and many other items as to which the decision of the carrier itself can not be conclusive, since all of these are necessarily paid by the public. Nevertheless these can not be determined as questions of law, but must rest in the judgment of the competent administrative authorities, first of the railroads and then of the State.

When the question of reasonable rates has been raised it has generally been in respect to some one article of traffic, and the attempt to consider it as a legal question necessarily has left out of view the whole method on which rates are made, and the investigation has proceeded after a manner which railroad officers could not possibly adopt in the management of their business. Restricting their attention altogether to one article of commerce the court might, perhaps, in some cases say that the rate that had been prescribed for it was one the carrier could not afford, and that to compel its observance would be unjust and perhaps force the carrier into bankruptcy; but in making such a ruling the court would proceed upon the assumption that the classification and rating in all other respects were to be left to stand, and that no relief was to be had by modifications in respect to other articles. As already shown, the carrier in fixing a rate upon an article never proceeds upon such an assumption. If policy or necessity requires the giving of unprofitable rates as to one article, compensation is expected to be made by a proper adjustment of charges in respect to others, so that it is seldom if ever a necessary result that the reduction of a single rate would be attended with a loss of net revenue. It is only when the whole traffic of a carrier is taken into account and the rates of the several classes of articles are considered and compared that a judgment can be formed whether a low rate upon any particular article of commerce

is likely seriously to affect the net returns from the whole. A court, therefore, in undertaking to pass upon a single rate as a matter of law must necessarily go to the very foundation of rating. It must place itself in the position of a carrier and substitute its own discretion and business judgment for that which has made the classification. When it is considered that a decision upon classification, or upon the rate imposed upon any article of commerce, may affect rates in distant parts of the country so that an intelligent consideration of the subject will require some study of the railroad situation in every part of the land, it may readily be believed that the court that should undertake to pass upon such a question as one of law, if it entered upon a proper investigation for the purpose, would have little time for the discharge of its more common judicial duties. But if its whole time were given to the subject the difficulty would still remain that in acting at all it would be acting exclusively in the field of discretionary authority.

An attempt is made to give authority to the courts to interfere by the suggestion that property or charter contract rights, or both, are involved in the matter of fixing rates, and therefore that it is not possible the conclusions of administrative boards should be final. This is an endeavor by the mere use of words to confer jurisdiction upon the courts where the substance is altogether wanting. Property or contract rights are involved in these cases precisely as they are in numerous other cases of the exercise of power under the police authority of the State, either by the State itself or by its municipalities. It is said sometimes that the power may be exercised to such an extent that the property of the roads would in fact be confiscated, and the most alarming pictures have been exhibited to the public in some cases of boards bent upon destruction, prescribing rates so low that it would not be possible for the carriers to conform to them and at the same time perform their obligations to their creditors and their stockholders.

The effort has sometimes been made to indicate a rule which must constitute the minimum of reduction in all cases,

and it has been said that rates must not be made so low that the carriers would be left unable to pay interest on their obligations and something by way of dividend to stockholders, after maintaining the road in proper condition and paying all running expenses. This comes nearer to a suggestion of a rule of law for these cases than any other that has come to the knowledge of the Commission. But it is so far from being a rule of law that it is not even a rule of policy, or a practical rule to which any name can be given, and to which the carriers themselves or the public authorities can conform their action. In the first place, when we take into consideration the question of the condition of roads and of equipment, the proper improvements to be made, the new conveniences and appliances to be considered and made use of, if deemed desirable, and the innumerable questions that are involved in the matter of running expenses, it is very obvious that there can be no standard of expense which the courts can act upon and apply, but that the whole field is one of judgment in the exercise of a reasonable discretion by the managing powers, or by the public authorities in reviewing their action.

It is to be borne in mind also that there are many roads in the country that never have been and in all probability never will be able to pay their obligations, and to pay dividends, even the slightest, to their stockholders. Many have become bankrupt and have gone into the hands of bondholders under reorganizations which have been made with creditors upon the money which their bonds represented, but such roads are almost invariably operated with benefit to the sections of the country served. They manage to pay running expenses, and perhaps keep up interest on present indebtedness; but this is as far as they can go under the stress of such competiton as they are subjected to. If the rule suggested is a correct one, and must be adhered to by public authorities, then it is entirely impossible that those who operate these roads can prescribe excessive charges, since it is impossible to fix any rates that would bring their revenues up to the point of enabling them to pay any dividend. The rule therefore takes them entirely out of the

control of any regulating commission. So far as concerns the matter of rates, they may prescribe those that are exorbitant, considered by the standard of other roads; but this could only be at the expense of their business, and the exorbitant rates could only be collected from those who had no other resort. The roads would remain as mere instruments of oppression for such localities or interests as were out of reach of their competitors, and their functions as public agencies would be rendered practically worthless. But the rule suggested would also be one under which those roads would be entitled to charge the most which, instead of being built with the money of the stockholders themselves, had been constructed with money borrowed; the larger the debt the higher being the rates that would be legal. If a road were out of debt so that it had no bonds to provide for, it must content itself with such rates as would pay some dividend to its stockholders. If the road were in debt, though it perhaps served the same communities, it might be entitled to charge rates 50, or possibly 100, per cent. higher. Such a rule could hardly be one of sound public policy, for it could not possibly be to the encouragement of railroad building purely as an investment by those who have the means for the purpose, since the rates, it is conceded, when a road is paid for when built, might be cut so low as to leave the dividends little more than nominal. The promoters of a new road might far better make themselves the creditors of a corporation than to become the owners of its stock, and there would be a standing encouragement to resort to such devices as would make the certificates of stock represent anything rather than money actually invested in the building of the roads. But over and beyond all this the attempt to apply the rule suggested would be absolutely futile, for the reason that the rates prescribed for one road would necessarily affect all others that either directly or indirectly came in competition with it. If, therefore, of two roads competing for business between important points, one were very largely indebted, so that at rates fixed by the official board it were barely able to pay running expenses and interest, and the other were free from indebtedness and able to pay large divi-

dends, any action of the public authorities whereby the rates of the last-named road were reduced, and at the same time the rates of the other not affected, would be plainly and obviously impossible. The one must put down its charges when the rates of the other are forced down. The regulation of the one in this particular would reach the other as inevitably as do the changes of the seasons, which affect the one affect the other also.

If, therefore, a court is to undertake to protect the one against its rates being so reduced as to endanger the payment of its interest, it must reach out and restrain any regulation by the public authorities of the rates of all competitors, irrespective of the question whether they also are or are not subject to the same risk, or are so circumstanced that they can be. It is thus seen at every turn that the regulation of rates on a consideration of the pecuniary or other situation of any single road, and without a survey of the whole field of operations, whereby its business may be affected, and under a supposition that what is done in respect to that road may be limited in its consequences, is entirely antagonistic to all principles of railroad transportation. The railroad managers have perceived this from the very first, and it is because they have perceived this that they have been compelled to organize themselves into railroad associations for the purpose of agreeing upon classifications and rates and upon the great variety of other matters pertaining to the methods of conducting, interlocking, and overlapping business, and all business affected by competitive forces. The futility of the suggested rule becomes more apparent when it is attempted to be applied to the transportation of a single article of commerce only, as, for example, breadstuffs; for, as already shown, the relative charges between any one article of commerce and the others which the carrier transports, are made from considerations of policy and in the discretion of the carrier, so that one may be, if considered by itself, unreasonably low or unreasonably high without necessarily affecting at all the income of the carrier when a readjustment of rates for all is made in view of that fact.

The commissions created by law for the regulation of rail-

way transportation do not deal with questions of classification or of rates as questions of law, but as being what they necessarily are—questions of discretion and sound judgment —and they are not supposed to limit their consideration in any case exclusively to the rating of any single article of commerce, or to any single carrier.

To conclude what we have to say upon this subject at this time, in presenting and earnestly calling to the attention of Congress a matter of procedure that is necessary to an efficient administration of the Act to regulate commerce, the Commission desires to say that its practical experience in administering this statute for nearly four years has demonstrated that the sixteenth section of the Act to regulate commerce should be so amended as to make its findings of fact conclusive under such limitations as will properly guard the rights of the carriers and not trench upon constitutional provisions. To illustrate what we mean, it would, perhaps, be sufficient in such amendment to provide that in every hearing before the Commission the carriers against whom complaint is made or whose conduct is being investigated, under the twelfth section of the statute, shall have notice of such proceeding, due opportunity to be present and heard by themselves and counsel, to offer evidence in such proceeding, as substantially provided for in the present Act, and to be promptly and duly notified of the findings of fact by the Commission and its decision as soon as such decision and findings of fact are announced; that within twenty days after receiving such notice said carriers or any one of them may apply to the Commission in writing, requesting the Commission to certify a transcript of said decision and findings of fact and all the evidence taken in said proceeding, to a named circuit court of the United States within a judicial district in which the carrier or one of the carriers making the request has its principal place of business; that then the Commission, with all convenient speed, shall have said transcript prepared, certified, and transmitted to the judge of said United States circuit court, whose court shall always be considered open and in session for the hearing and disposition of such business; that upon receiving such transcript the

court shall forthwith make all such orders and give all such notices as shall bring about a speedy hearing and determination of the matters involved. The parties to said proceeding in said circuit court shall be the Interstate Commerce Commission as complainant, representing the United States, or the individual complainant, as the case may be, representing himself, and on the other hand the carrier or carriers, who are defendants. The hearing in said circuit court shall be had upon the report and evidence in said transcript and the arguments of counsel thereon. Assignments of error, pointing out specifically what the alleged errors committed by the Commision have been, must be forwarded to the judge of the court, and a copy of the same to the Commission and to the individual complainant, if there be such, on the day the request is made to the Commission for the transcript by the carrier or carriers defendant, and said assignment of error must state and aver that they are each material. On such hearing in said circuit court all findings of fact made by the Commission shall be deemed and held conclusive, unless found by the court upon the record to be erroneous, and all questions of law arising in said proceeding shall be heard, considered, and determined by said circuit court as though these had not been heard, considered, and determined by the Commission in any manner whatever.

If no application be made by the carrier or carriers to have the matters involved transferred into a circuit court of the United States within the time provided, then the findings of fact and the decision of the Commission thereon shall be deemed final as to all administrative matters arising under the Act to regulate commerce, and, if necessary to that end, shall be enforced by a circuit court of the United States accordingly by proper process upon the application of the Commission or the party interested.

RATE WARS AND RATE CUTTING.

In former reports the Commission has referred to the undoubted fact that competition for business between railroad companies is often pushed to ruinous extremes, and

that the most serious difficulties in the way of securing obedience to the law may be traced to this fact. When competition degenerates to rate wars they are as unsettling to the business of the country as they are mischievous to the carriers, and the spirit of the existing law is against them. If the regulations for the making and publishing of rates, and for adherence to them after they have been put in force, were all carefully obeyed these rate wars would seldom or never occur, and when they did occur the law itself would prevent most of the abuses which now attend them. But as we witness them now they are almost certain to be like other wars, prosecuted regardless of law as well as of the injuries they inflict upon the public. Agreements between railroad companies which from time to time they have entered into with a view to prevent such occurrences have never been found effectual, and for the very sufficient reason that the mental reservations in forming them have been quite as numerous and more influential than the written stipulations.

It was observed some years ago by an able railroad manager that "the agreements entered into were generally made by the managers with the purpose merely of practicing deception upon each other," and he was chiefly instrumental in securing the formation of railroad associations which it was believed would be more effectual in securing harmonious relations. Nevertheless, these also have to a large extent failed of their purpose. Having no legal sanction the agreements under which they have been formed have continued so long only as those forming them could see it was for their interest to abide by their provisions. When the device of pooling was made a part of these arrangements it was a necessary part of the scheme for a pool that the amount of business to be brought into it should be fully disclosed and known, and by this disclosure the opportunity for secret violations of understanding was to some extent cut off. Pools are now under the ban of the law. They were forbidden because it was believed by Congress that they were often resorted to as a means whereby excessive rates might be maintained and whereby the carriers might be relieved from all restraining force of competition. It was never admitted

by the carriers that pools could or did have that effect. On the contrary, they insisted that competition in its beneficial aspects continued as actively as ever, though less disastrously. Claiming that pooling was the most important means of enabling them to preserve, as between themselves, useful relations and to secure observance of the provisions of the law for the regulation of their business, the carriers procured to be introduced in each house of Congress at the recent session a bill expressly authorizing agreements to apportion the carriage of competitive traffic for the purpose of enabling each competing line to carry a share thereof and making such agreements lawful. One provision was, that a copy of every such agreement which the roads might first put in force should be filed with the Commission, which might modify or annul the same after a hearing upon notice to the parties if the results of its operation should be found to be in contravention of any provisions of the Act to regulate commerce. No action was taken upon the bill and it is still pending.

It is not uncommon to find that a road is able to compete for an important business, but it is nevertheless at a disadvantage in the competition by reason of greater length of line or heavier grades, or of other unfavorable circumstances, and that in consequence it is unable to obtain what it deems a fair share of business in open competition with rivals who offer the same rates at every competing point. It is therefore compelled, if it would share the business, to make lower rates, and the rivals recognize this necessity and allow an agreed division of business between all competitors to be effected by giving the carriers thus unfavorably circumstanced what are called differential rates; that is to say, by allowing them to make rates sufficiently below those which are charged by the others to enable a reasonable proportion of the business to be attracted to the unfavorable line. By this device the carriers are often enabled to restrain destructive competition. Many roads in different sections of the country are allowed these differentials, and the Canadian Pacific, which has much the longer line between the Atlantic and Pacific seaboard towns of the United States than any of

the other transcontinental lines, is allowed a differential on its business between such towns. This is done by agreement and as a means of inducing the Canadian line to abstain from pushing its competition to an extreme that must be injurious to the profits of American roads. The conceding of a differential, however, is very likely not to be made willingly, but to come under the stress of compulsion at the end of a disastrous rate war; and, as when once made it depends for its existence upon the continuous assent of the parties agreeing to it, there is constant liability that under the feelings engendered by competition, or from a conviction that it ought not to have been granted, it will be dissented from and an unprofitable rate offered by competitors instead.

During the summer last past the Commission had occasion to make inquiries into the proper charge to be made by the carriers of the Northwest for the transportation of food products in that section of the country, and in doing so it endeavored among other things to ascertain what the carriers were actually receiving; that is to say, not merely what the rate sheets showed, but what they collected from shippers. Those members of the Commission who conducted the investigation became satisfied that the published rate sheets were not adhered to, and it made a decision reducing the nominal rate, but not below what it was believed the carriers were on the average accepting. If they were right in this belief the effect of the order nominally reducing the rates was rather to equalize than to reduce them, so that the public in general should have the benefit of low rates as well as favored shippers. Complaint was made of this reduction, and carriers went so far as to say that if they obeyed the order of the Commission their net revenues would be reduced below what they could reasonably afford. The Commission had no desire to do this, and was quite willing if the fact was as was claimed that it should be shown.

In order to obtain facts which might have a bearing upon the question whether there was any just foundation for the complaints made, the Commission, after its opinion that reduction should be made had been published, but before any order of reduction was put into effect, on June 28, 1890,

addressed to the general freight agents of the roads in the Northwest a circular requesting them severally to give the Commission the following information: First, how many carloads of corn shipped from any point west of the Missouri river had been delivered by the company in Chicago during the month of June, 1890; second, from what connecting railroads did the company receive such corn at the Missouri river; third, what was the company's share or division of the rate; that is to say, how much did it get for the haul from the Missouri river to Chicago; fourth, to whom was the corn consigned in Chicago, and how much did each consignee receive thereof. When this circular was received by the general agents it appears by the information subsequently transmitted to the Commission that a meeting of managers was held to consider the matter. This meeting was held on July 9 last, and the following telegram from a prominent railroad official was laid before it:

To the Board of Managers:

GENTLEMEN: Referring to the circular from the Commission of June 28, asking corn statistics, I have some doubt of their authority to demand statement of divisions or of consignees, asked for in inquiries 3 and 4. Possibly the roads will not object to giving the information, but if thought best to decline the question can be taken before the court. In that case it would be advisable to reply that some of the information requested is believed to be beyond the authority of the Commission to require, and as it is presumed a partial answer would be unsatisfactory the roads feel constrained to refrain from attempting to compile the statistics until the question shall be decided.

The result was that the Commission failed to get the information called for, the carriers apparently preferring to rest their case with the public upon assertions instead of giving to the Commission the information that might enable it to judge with some degree of accuracy whether the complaints were well founded. A little later, on August 2, 1890, which was still before the order reducing rates had been made to take effect, though after its promulgation, the Commission gave another opportunity for the carriers to disclose the real facts bearing upon the question of actual injustice by addressing to J. N. Faithorn, chairman of the Western

Freight Association at Chicago, a letter in which it was stated that—

Complaints still reach us of alleged rate-cutting from Missouri river, points, though we get nothing definite or satisfactory as to the actual situation. We are advised that your monthly reports going back to and including January last will be instructive on this and other subjects. Will you oblige us by sending us copies of these monthly reports as far back as January?

The following is the answer received to the Commission's letter:

CHICAGO, *August* 9, 1890.

DEAR SIR: I must apologize for the failure to make early reply to your favor of the 2d instant, which came to hand during my absence from the city on a brief vacation.

I would be very glad indeed to comply with your request for copies of our tonnage report, going back to January last, if it were a matter that rested with me alone. You will understand, however, that the reports are considered to be more or less in the nature of private information for the railroad companies involved, and under our present arrangement I would not be at liberty to send you the documents desired. The statistics being those of all the lines combined, necessarily the situation requires that to effect a compliance to your request all parties in interest would have to assent thereto.

I regret exceedingly my inability to serve you in the manner you suggest, but I trust the foregoing will make it clear to you why I am unable to do so.

The Commission could not do otherwise than to acknowledge the courtesy of this communication, and it might well believe that Chairman Faithorn, who had on previous occasions shown a disposition to co-operate with the Commission in its work under the law, would have given the information if allowed by his superiors to do so, but the failure to obtain it was not calculated to lead the Commission to the conviction that the complaints of injustice in its action were well founded. The implied invitation of the managers to the Commission to fight its way to information in the courts it was not deemed important at the time to accept. It was supposed that if their complaints were well founded they would be ready to show the facts, and if they preferred not to do so, the Commission, as the matter then stood, did not care to take steps to compel them.

In a reported interview with one of the railroad managers

at Chicago, published in October last, and not disclaimed, this gentleman said:

> The situation in the West is so bad that it could hardly be worse. Rates are absolutely demoralized, and neither the shippers, the passengers, the railways, or the public in general make anything by this state of affairs. The profit is all secured by the middleman—the go-between. Take passenger rates, for instance. They are very low; but who get the benefit of the reduction? Why, no one but the scalpers, who have nothing at stake, every thing to win, and nothing to lose. In freight matters the case is just the same. Certain shippers are allowed heavy rebates, while others are made to pay full rates. Some of these shippers are constantly afraid of being hauled up before the Interstate Commerce Commission, but they need have no fear from that direction. The management of rates is dishonest on all sides, and there is not a road in the country that can be accused of living up to the rules of the Interstate Commerce Law. Of course, when some poor devil comes along and wants a pass to save him from starvation, he has several clauses from the Interstate Act read to him. But when a rich shipper wants a pass, why, he gets it at once.

The remedy that he suggests is that the Commission would allow the roads to pool their traffic. Much trouble then, he says, would be averted, rates could be maintained much better than they are, and the earnings of the roads would certainly be increased. But this manager understands very well that the matter of pooling rests with the legislative department of the Government, and that the Commission could not give the privilege if it thought it wise to do so. If, however, the managers elect to take an attitude of disobedience to the law and to cut rates, as they charge each other with doing now, they may very likely succeed in making the condition of things, not only for their stockholders but also for the general public, worse than it is now. It will, nevertheless, be somewhat difficult to understand how the persistent cutting of such rates as the Commission has prescribed for the roads, and the acceptance of something lower, is likely to have a tendency to convince the public that the rates which were prescribed were lower than the roads could afford to accept. On the contrary, the managers in thus cutting rates will appear to be furnishing to the public evidence of no slight weight that the open and published rates which they fail to observe are still higher than they ought to be. And as bearing upon the wisdom of their declining to give information

to the Commission, it may be proper to suggest that the very disclosure of their business, if freely and fully made, would have for them all, as a check upon reckless competition, some of the benefits which they are claiming would result to them and to the public from the privilege of pooling.

Statements like that of the railroad manager given above, have found justification in the sudden diversion of business from one road to another, in the frequency with which products are sold in the market for less than cost, including published rates of transportation, and in such other circumstances attending the traffic as lead to the conclusion that less than legal rates are collected from many favored shippers. Like declarations as to unjust discriminations, giving of rebates and unlawful preferences have been reiterated in the press as well as in published statements of numerous railroad officials.

Since the presentation of our last annual report, officers, managers, and responsible representatives of the roads, or some of them, have often declared that the established and published rates were not maintained, that some favored shippers paid less while others paid full rates, and that the roads which obeyed the law frequently did so to their serious injury and with the loss of business and earnings. The officials making such admissions and statements never accompany them with any evidence upon which the alleged guilty parties may be convicted and punished. On the contrary, if they have in their possession evidence, or information as to where such evidence can be obtained, it has been withheld from the Commission.

With a view to the correction of violations of the Act to regulate commerce forbidding rebates and unjust discriminations and to enforce its provisions, the Commission employed special agents to make such investigations as were practicable, without authority, however, to administer oaths or examine books. Such agents visited and made investigations at railroad centers and localities where it was claimed violations were most flagrant. As a result some abuses were corrected, and in a few instances indictments were found and are now pending.

The Commission also retained counsel and caused investigation to be made with a view to the punishment of offenders against the Act based on the statements and admissions of railroad officials above recited and the additional facts that might be developed.

Upon these investigations and after due consideration the Commission determined that inquiry ought to be made by a United States grand jury, before which railroad officers and managers and other persons might appear, or be called as witnesses, to give testimony in support of the alleged violations of law published or laid before the Commission by such officers, managers, or other persons.

To this end, and promptly on request of the Commission, the Attorney-General of the United States appointed necessary special counsel and assistants to the United States district attorney, and thereupon inquiry into such alleged violations of the Act was commenced and is now being prosecuted by the grand jury in the United States district court at Chicago, Ill.

Since the last report the Commission has placed complaints for criminal prosecution under the law in the hands of United States district attorneys as follows: At Chicago, several cases and for different violations; at Cincinnati, several cases; at Cleveland, several cases; at Dubuque, a case; at Memphis, a case; at New York, a case, and at Pittsburgh, two cases.

Under the statute criminal prosecutions must be conducted under the direction of the Attorney-General, and in every instance in which the Commission has had occasion to apply to that officer for the co-operation of his department in the enforcement of the law his action has been prompt and courteous.

REASONABLE RATES.

Any one who deals wisely and justly with the subject of the regulation of transportation by rail, whether he does so from the standpoint of public interest or of the just claims of those whose means are invested in such transportation, will fully recognize the equitable right of the carriers to reasonable rates for the service performed by them for the public,

and will concede that this equitable right should be the measure of the legal right. This is true, not merely because the investments have been made under the invitation of the law, and therefore are entitled to its protection, but because the roads upon which such transportation is conducted have been of infinite value to the people. They have, in fact, been the most important physical agency in national recuperation since the great civil war, and in giving wealth and prosperity to the country as a whole. What they have done has been accomplished because the railroad interest as a whole has been prosperous, and whatever would unjustly destroy or restrict their prosperity would be as mischievous to the country at large as it would to their owners.

If every railroad could be considered by itself and the rates made for it without regard to others, it might be said that not only had it an equitable and legal claim well founded to a reasonable compensation for the service rendered by it to the public, but that this reasonable compensation would imply a fair return upon the capital actually invested. We have no doubt that the Act to regulate commerce intends that there shall be such reasonable compensation and fair return wherever in the nature of things it is practicable. But railroads, in the matter of rates, cannot be considered singly. In that respect the railroad interest must be regarded as substantially a unit. What is done by or for one road may determine what can be done by or for another; and when a road favorably situated charges but reasonable rates for its own service it may be impossible for a rival road which was built, perhaps, without any sufficient demand for it, or which is unfavorably situated for successful competition, to maintain such rates as will give to it a corresponding return upon the investment. It will be compelled to measure its rates by those of its more fortunate rival, whether its stockholders receive returns upon their investment or not, for reasonable rates to the one may determine what the other shall receive, notwithstanding anything its management can do or that can be done for it by the public authorities.

The rates that are now being charged by railroad managements are for the most part such as have been fixed by the

roads themselves under the stress of severe competition, and if they are less remunerative than the roads desire or deem necessary for just compensation, the responsibility for the situation rests mainly upon themselves. State commissions have in some cases reduced rates, and reductions have been ordered by this Commission. In some instances this has been done because charges were found higher than the traffic should bear, but more frequently to make them proportional and relatively just. The operation of the law and the action of the Commission have brought about many changes in the equalization of rates and the removal of discriminations between individuals and localities, but changes of this character have rarely, if at all, resulted in loss of revenue. Careful examination of the rate sheets on file with the Commission, and a comparison of these with those that were in existence before the Act to regulate commerce was put in force, demonstrate the fact that there is from year to year a tendency towards decrease. This fact is fully shown by the tables in Appendix C. It is not believed the minimum has yet been reached, and the decrease will probably continue to be observed from year to year hereafter.

There has been a greater tendency towards an equalization of rates and towards the removal of anomalies which made the rates oppressive wherever the competition was but slight or nominal. The rate sheets, however, have never, it is believed, shown with entire accuracy what the real rates made by the railroads were. A knowledge that the nominal rates were not impartially maintained has been among the strongest reasons for governmental interference by law in the regulation of railroad management, and was especially influential in the adoption of the Act to regulate commerce. It was thoroughly established when that Act was pending, and indeed may always be said to have been an admitted fact, that favoritism prevailed in all branches of the railroad service, that strong interests paid less, and sometimes far less than their just proportion of the rates charged, and that the burdens of railroad maintenance fell most severely on those who could least afford to bear them.

The attempt which the Act made to establish reasonable

rates looked more to bringing about equalization and uniformity by abolishing unjust discriminations than to indiscriminate reductions of the rates as a whole. The Act sought to do justice as between all classes of shippers, and it was not a necessary result, nor is there reason to believe it was the purpose, that reasonable revenue should be diminished. It is not believed that the effort to accomplish the justice aimed at has been altogether successful. If we go no further than the railroad managers themselves for information we shall not find that it is claimed or pretended that railroad service as a whole is conducted without unjust discrimination, or that the rate sheets are altogether lived up to and sustained. A large proportion of the time and attention of railroad associations is given to the subject of supposed violations of the rule of just equality by their members, or by those who come in competition with them, and the manager who does not admit that his own line is guilty of violations of the rule of the statute does not venture to assert a belief in the obedience of law by all others.

Elsewhere some of the difficulties of dealing with this subject and in enforcing the rule of uniformity have been mentioned. It is as true in applying rules of regulation to the roads as it is in making rates, that though every road in the country may stand by itself as a piece of property, no road stands by itself as a factor in transportation. What is done by one necessarily affects others; and if it is of a nature to cause disturbance the mischievous influence may extend, not merely to those who are directly in competition with it, but on and on from line or system to line or system until perhaps the most distant parts of the country are reached. When one road underbills an article of merchandise, or cuts a rate, or lowers a classification, the others must either apply moral or legal force to put a stop to its conduct or they must submit to a loss of business, or they must endeavor to hold their business by imitating its example in violation of law. This is so plain that it is obvious on the mere statement. The public may believe the law ought to be sustained, and may desire that it should be, but it will nevertheless do business with the road that gives it the best terms, and when one road

offers better terms than another it is not likely a traveler or a shipper will stop to question whether in giving the terms the law is or is not observed.

If the regulations which are established by the railroad associations were uniformly or even generally observed by their members respectively, there would be little difficulty in enforcing a rule of reasonable rates, for the competition between the roads which even then would exist would be such as would prevent the establishment of rates which are altogether unreasonable, and the public would not be likely to complain if they were satisfied that the rate sheets were observed. When, however, a general conviction prevails that the roads are secretly violating the law by giving preferences and making unjust discriminations, it is almost certain that whatever may be the nominal rates which are put before the public, an impression will be general that there will be another set of rates which it will be possible for some shippers, at least, to obtain. The road which suspects its competitor of giving preferential rates will be very likely to give them itself, whether its suspicions are or are not well founded.

It may therefore be said with emphasis that if a carrier by rail is more than reasonably prosperous from the revenues which it collects for services performed for the public, it by no means necessarily follows that the prices nominally fixed by its rate sheets are reasonable. If these are secretly cut, or if rebates are given to large shippers, the fact of itself shows the rates which are charged to the general public are unreasonable, for they are necessarily made higher than they ought to be in order to provide for the cut or to pay the rebate. It is a very erroneous notion that the results of a cut or of a rebate fall only upon the carrier; they fall at last to a considerable extent upon the public, and those who pay full rates largely make up for every allowance that is made to those who do not; if the carrier habitually carries a great number of people free, its regular rates are made the higher to cover the cost; if heavy commissions are paid for obtaining business, the rates are made the higher that the net revenues may not suffer in consequence; if scalpers are directly

or indirectly supported by the railroad companies, the general public refunds to the companies what the support costs, and in every one of these cases the fact of improper drafts upon the gross revenues, or of improper reductions of what ought to go to swell these revenues, is proof that the rate sheets are too high. It would be perfectly legitimate and proper in such cases to order such reduction as would bring the published rates down to the average of what is received for railroad service when the whole business, not merely that which is done at full rates, but the aggregate when that which is done at reduced rates or done free is taken into account. No evidence can be more conclusive that the carrier is by his regular rate sheets charging something more than reasonable prices for his service than the fact that either openly or secretly he violates the law to accept from favored classes, or from individuals, a less compensation, or that he pays large sums for procuring business at the rates named, or that he so manages his business that parties who have no legitimate connection with it are enabled to prey upon it, and thus indirectly prey upon his patrons.

A reasonable rate is one that will make just and fair return to the carrier when it is charged to all who are to pay it without unjust discrimination against any, and when the revenue it produces is subject to no improper reductions. No carrier has any ground for just complaint if its published rates are reduced by the public authorities to the standard of the average it accepts, when by direct violation of law, or by devices that are intended to evade its provisions, the published rates are departed from. Its own conduct in such a case fixes the maximum of the claim it can with any propriety make upon the public. In order to ascertain whether the rates of a carrier as shown by its rate sheets are or are not reasonable, it is the right of the public authorities to know what it actually imposes and collects, and to have access to its books for that purpose. It has not been the desire of the Commission to overhaul the books of carriers on slight occasions, and the pressure of business upon it is such that it has not been able to do so in all cases where public interests seemed to require it. It has in some cases called upon the

carrier, or upon the railroad associations, for a showing in respect to some particular business, and has generally met a ready response. A notable instance to the contrary is mentioned elsewhere. It is believed by the Commission that a carrier which only makes reasonable rates by its published tariffs will always be ready to make complete exhibit to the Commission of actual collections from all branches of its business without forcing the Commission to go into a personal examination of books and papers, since by such exhibit alone can it give conclusive proof that in its dealings with shippers, or with any class of the public, it does not so far depart from its rate sheets, or fail to apply them to actual business, as to demonstrate that the nominal rates were excessive.

UNIFORM CLASSIFICATION.

In former reports attention has been called to the fact that when the Act to regulate commerce went into effect the several articles of commerce which were the subjects of transportation by rail were, to a considerable extent, in different sections of the United States, for the purposes of rating, classified differently. In one section the several carriers were perhaps found to be associated together in the use of a classification containing a number of classes, commonly in the neighborhood of six, in which the articles expected to be offered for transportation were arranged; those which it was thought should bear the highest rates being placed in the first class, and so on in descending order to the last. Such an arrangement facilitated the making of rate sheets, since it enabled a great number of articles to be rated together in a single paragraph by specifying the rate for the class instead of for each article separately, as would otherwise have been necessary. The carriers associated in another section would perhaps have made and put in force a classification considerably different from this; and overlapping the territory of one or both there was, in many cases, found in force still another classification made sometimes by the carriers, sometimes by State authorities for the roads of the State. Even single roads in some cases had independent classifications. The

consequent confusion may easily be conceived. The purchaser of property at a distance often found great difficulty in learning what the charges for carriage would be, and this difficulty sometimes approached an impossibility when the shipment was for long distances, since the classification might change several times on the way. The consequent difficulty in making the ordinary calculations for business sales or purchases which must always be affected by the charges for carriage, is obvious. Traffic managers and agents found themselves, almost as much as the shippers, embarrassed by the difficulty of keeping so far posted as to be able to state with accuracy the successive sums which would make up the total to be paid by the shipper of freight for any considerable distance. The consequent errors and claims against the carriers for refunding overcharges were infinite in number and furnished a great amount of labor for the management of roads, besides resulting in many losses.

One peculiarity of this variety of classification was that, although all were made with some regard to uniform general principles, they all varied in the application of these principles, and upon considerations more or less special to their respective districts. Thus none of them perhaps lost sight of the general principle, that the rating of articles of commerce may properly be made to bear some proportion to the value; the most valuable being taxed highest to the relief of those which can not bear transportation for a long distance, or perhaps at all if the charge were to be measured strictly by the carriers' service. Nevertheless each classification qualified this principle in its application with a view to the special benefit of the products and industries of its section; and the same article might therefore be rated low in a section where the prosperity of the people largely depended upon it and high in another section where its production was limited or unknown, and where other articles of local production were rated low for like local reasons. The classifications thus had as between different sections an effect something similar to that which might be produced if the several States had power to lay customs duties and should do so on the principle of protecting local industries.

This state of things was one of the first to which the Commission directed its attention, and it has uniformly insisted that the several existing classifications ought to be merged into one. The Commission, however, has never overlooked or failed to appreciate the very great difficulties that must attend such a work. It was perfectly obvious that the merging could not be effected by the voluntary action of the railroad authorities which had made the classifications without very great concessions being made on every side; concessions, the necessary effect of which must be, while lowering the relative rates upon some articles of commerce, to very considerably increase them upon others. Not only would the roads be affected thereby, but every section of the country would of necessity be compelled to resign something of the advantage which before it had enjoyed in respect to its special products or industries; and it could not be expected to assent to this willingly until it should be made to see that adequate compensation was made in other directions. It would not be enough that the completion of such a work could plainly be seen to be of national importance, and politic and useful for the people as a whole, but it must also be evident to any particular section that it lost nothing by its accomplishment. Even when this was obvious the local interests unfavorably affected by the unification must be expected to oppose it vigorously.

In September, 1888, a resolution passed the lower House of Congress directing this Commission, prior to January 1, 1889, to prescribe one uniform classification of freight for the use and guidance of the various railroads of the United States. This resolution was laid aside in the Senate, doubtless because it was believed that the preparation of a satisfactory classification within the time mentioned was quite beyond the power of any body of men; and, second, because to make a classification by concessions on behalf of every section of the country, it was indispensable that every section should be represented and that the representatives should be familiar with the reasons which had influenced the making of the classification then in force. Obviously such representatives were most likely to be found among traffic managers of

roads or officers of railway associations, whose interests, as well as the interests of sections served, were directly involved.

The Commission, however, did not allow the subject to rest with the effort made in Congress, but took frequent occasion since, as well as before that time, to impress earnestly upon railway managers the necessity for their taking early action, not only because it was important in the interests of the public and of the roads themselves, but also because it must inevitably be brought about at some not distant day, by statute if not otherwise; and every day's delay only prolonged and increased the disorder and confusion. Many railroad managers responded promptly and favorably so far as their individual influence could go, but it is due to truth to say that among many of the ablest and fairest-minded of the managers it has all the while been an accepted maxim that to combine freight classifications into one, otherwise than very slowly and by successive steps, was quite out of the question, and that all suggestions looking to speedy consolidation could only be looked upon as Utopian.

Nevertheless, there have been among those connected with railway service some men of ability and far-seeing views who have been of a different opinion, and who for the past two years especially have labored so far as other duties would permit of their doing so, to bring about uniform classification speedily. In December, 1888, delegates from the New England Association, the Trunk Line Association, the Central Traffic Association, the Southern Railway and Steamship Association, the Mississippi Valley Lines, the Western Freight Association, the International Association and the Transcontinental Association convened at Chicago and appointed a standing committee consisting of two members from each association "to unify as rapidly as possible the several classifications now in use." Of this committee, Mr. J. W. Midgley, of Chicago, who, from the first, had been active and influential in working for uniform classification, was made chairman.

The committee had numerous meetings, which continued up to June 21, 1890, when a report was agreed upon for submission to the associations represented, a copy of which is

hereto annexed as Appendix D, and which can not fail to be read with interest. The report was accompanied by a classification also agreed upon, and which it was recommended should be made effective January 1, 1891. The classification is voluminous, and it is not deemed important to reproduce it here. It is believed that it will be adopted and put in force by the several associations represented, though possibly not by the time named. Indeed, the time fixed upon was so short, in view of the magnitude of the work to be accomplished, that it is scarcely possible that all should be ready to adopt and act upon the classification proposed by the time named. The changes which it will make in existing rates must be very considerable in all the associations, and they require careful study and examination before it can be fully determined that the effect will not be seriously harmful. This would be particularly the case in the territory of the Southern Railroad and Steamship Association, where the interests are more diverse than elsewhere, the railroads being in sharp competition, not merely with each other, but also with steamship lines at important points. There is every reason to believe, however, that the subject is being earnestly and favorably considered there as well as elsewhere, and with a determination that promises satisfactory results. A most unfortunate circumstance attendant upon this effort to accomplish a great reform is that the Transcontinental Association failed to unite in the result reached by the conference, so that the business of the Pacific Coast, with the remainder of the country, will necessarily for the present be left to the old confusion. Nevertheless a very long step has now been taken towards the final accomplishment of the great work of unification, and the Commission, with the highest gratification, affirms its confidence that the time is not far off when one classification of freights for the purposes of rating for transportation by rail will cover the whole territory which is subject to the Constitution and laws of the United States. It is not to be expected, however, that the proposed classifition, though accepted by the carriers, will be found when subjected to practical test to be altogether faultless. The committee which reported it, as will be seen by the report

given, have not expected, nor even hoped for this, and as practical men they knew it would be inevitable that imperfections should from time to time be discovered which experience alone would enable the carriers to supply or remedy. Still less is it to be supposed that the classification will prove altogether satisfactory to the business interests of the country. It was made without conference with such interests, and they are yet to be heard upon it. The duty of the committee under the authority conferred was a comparatively narrow and special duty. It was to unify existing classifications, not to make and perfect a new one independent of those already in existence. Its members, therefore, could not feel empowered to receive delegations from diverse business interests, or from different sections of the country, and to take up and consider with them what changes it might be wise or just to make as they might if the whole subject of classification had been submitted to them without limitation or restraint. They must have very well understood that all interests and all sections would at some time be entitled to be heard on the questions of classification which affected them, but as their own authority was in the nature of a special agency, and did not contemplate the hearing by them of parties not in the railroad service who might desire to present their views, it was obvious that any such hearings must, from the nature of the case, be had by their principals after the work of the committee was finally submitted. For a considerable period therefore after the new classification shall be given effect it must be expected that modifications will from time to time be made as the practical application to the business of the country shall make plain the necessity or the justice of changes. It is also to be expected that many objections will go beyond criticism of particular features, and that those who have insisted from the first that uniform classification was impracticable will not immediately cease from urging that view warmly and earnestly, so that possibly it may appear for a time as if the business public condemned the work. But temporary opposition of at least the interests affected is a necessary attendant upon any considerable reform in railway service, and the agreement upon a uniform

classification, however defective the work may at first appear to be, is of itself, as the Commission believes, in some sense a reform, because it brings the carriers together on a common platform and fixes in the minds of managers the fact that the question involved is no longer one of making a common classification but of perfecting it. It is pleasant to be able to refer in this connection to the action of the convention of State railroad commissioners recently held in Washington, and more particularly mentioned elsewhere. In that convention a unanimous expression was given in favor of uniform classification, and it may safely be assumed that not only will the action of this committee of the carriers be welcomed by the State commissioners as an important step towards bringing the regulation of railways by State and national authority into harmony, but that these commissioners may be relied on to recall State classifications where they exist, and also to lend an active influence in favor of making uniform classification by the carriers universal and satisfactory.

Indeed, as this report goes to press the information comes to the Commission from the Railroad and Warehouse Commission of Illinois that that body has adopted the uniform classification above referred to, to take effect within its jurisdiction.

The Illinois commission has notified the carriers of their action by a circular that—

> The commission will at an early day adapt their tariff of rates to said classification and cause the same to be printed, together with said classification, and furnished to the several roads of the State before January 1, 1891, as provided by law.

It is understood that the date when the new classification shall take effect has been fixed for March 1, 1891.

A letter from the chairman of the uniform classification committee to this Commission, states that the committee, encouraged by the action of the State of Illinois, proposes at an early day to visit and confer with the railway commissions of other leading States of the West with the view of securing similar action.

It may be, and is indeed, highly probable, however, that there will for some considerable time to come, and possibly

always, be some commodity rates; that is to say, rates made upon some articles of commerce that are left to stand by themselves and not put into any classification. Coal may very likely be one of these articles, iron and copper ore perhaps—a few articles which are not of general production, but are found or produced only in particular sections. But these, it is believed, will not be numerous. Indeed, they are not numerous in the proposed classification which the committee above mentioned has already laid before the Commission.

For reasons stated in the report, and which would be obvious without stating, it is but reasonable and just to the carriers endeavoring to effect this reform that great patience on the part of the people be invoked while the new classification is being put in force and is having its first effect on the business of the country. It is very plain that large numbers of shippers, and to some extent whole sections of the country, must be disappointed in the rating of their articles, and that many interests must for a time necessarily sacrifice something to the general good. Any such work is only accomplished by numerous compromises of divergent interests, and it is reasonably to be expected that there will be found in every section of the country those who believe that the changes have been made in the wrong direction, with the consequent result that their own interests suffer from the modifications in classification which injure where they should have helped them. All such complaints will no doubt have due attention, but when the work is perfected, and the business of the country has had time to adapt itself to uniform classification, there is every reason to believe the advantages to the country at large and to business interests in every section will be so great and so obvious as to compel universal acknowledgment.

LONG AND SHORT HAULS.

Complaint continues to be made of the operation of that part of the fourth section of the Act to regulate commerce commonly called the long and short haul clause. It is satisfactory to be able to say, however, that there has been much

less of this during the past year than during any year preceding. The carriers by rail have so far made their rates and charges fairly proportional as between local and long-haul traffic that the clause, if it ever worked injustice to them, does so no longer. Indeed, as the general result is to give greater satisfaction to local communities without unjustly affecting the great centers of commerce, the outcome cannot fail to be beneficial to the carriers themselves. Nothing is more desirable to any railroad than that its patrons shall be convinced that its rates are just, and they can never be made to believe this while the extraordinary differences in charge which were formerly made in many cases, as between the long and short haul traffic carried over the same line, are persisted in. Much of the complaint now made of the clause in question, with a view to affecting public sentiment, ignores altogether the fact that the prohibition of the greater charge for the shorter haul is very much qualified in the statute, and that in respect to freights it is limited to those of a like kind carried over the same line in the same direction and under similar circumstances and conditions. A stranger to the law might infer, from some public addresses and pamphlets which have assumed to discuss this subject, that the railroad companies were prohibited from carrying the necessities of life over long distances at very low rates unless their rates on other subjects of transportation for shorter distances were made to correspond. Indeed, instances have been pointed out in which it was said that certain articles of commerce could not now be transported for long distances because, by reason of this provision, they would not bear the charges that must under compulsion of law be imposed upon them. Among such instances has been mentioned the granite industry of New England, as to which it has been said that valuable manufactories have ceased to be profitable because it has now become impossible for the proprietors to obtain from the railroad companies the nominal rates for the transportation of their products which they formerly enjoyed, since it is now, by the long and short haul clause, made criminal for the companies to give such rates. A complaint of this nature is not to be met by argument, because it is baseless in point of fact.

The instance mentioned may safely be assumed to be chosen rather from regard to the needs of an attack upon the law than from any belief in the justice of its application. The prohibition of the fourth section, so far as concerns this article of commerce, or any other that can be named, will have no application whatever until it is made to appear that elsewhere upon the lines of the roads conveying it there is property of the same kind for transportation by the same carriers in the same direction, upon which the carriers are disposed to making greater charges in the aggregate for the shorter hauls. The wheat of the extreme West, it is also said, can no longer have the nominal rates which were formerly made for transportation to the seaboard, but this assertion is also without point or applicability unless it is shown that the carriers are not only disposed to give such rates, but propose to make up for the consequent losses to themselves by the imposition of greater charges in the aggregate for the carriage of the like grain when offered for carriage by growers in the States nearer the seaboard. Nominal rates impartially made as between shippers of like articles in the same direction and under like circumstances and conditions are as admissible now as they ever were.

A law that does not prohibit an equal charge for the transportation of like articles for the longer as for the shorter distance would seem to be quite as liberal as could be asked for or desired, provided the transportation in each case is under like circumstances and conditions. And such is the law of the clause in question; the same charge may be made for the carriage of the like articles for ten miles as for a thousand without a violation of its terms. Even in its prohibition of the greater charge upon the shorter haul it lays down no arbitrary or inflexible rule, but assumes that there may be exceptional cases which can be justified in reason. And it is a matter of common knowledge that there are in different parts of the country many cases in which the greater charge is still imposed for the shorter haul of like property in the same direction; which the carriers defend upon a showing that the circumstances of the cases are so different as to warrant this seeming anomaly and unfairness. It is pleasing to be able

to state, however, that in these cases the carriers, looking only to their own interests and the satisfaction of the general public, are moving steadily in the direction of bringing their charges more into proportionate uniformity with those generally prevailing.

The most frequent complaints that have come to the knowledge of the Commission within the last year have come from parties who have assumed to speak in the interest of the railroads of New England, though not, so far as is known, by the authority of any of them. These complaints have assumed, without taking the pains to demonstrate, that the clause in question was specially injurious to New England interests, and particularly to the interest of Boston, the principal seaport of that section. It seems to have been taken for granted that the mere assertion of specially injurious consequences would be accepted by the general public as proof of the fact. The circumstance mentioned, that the complaint does not come from the carriers themselves, might justify its being passed over in silence, since the interest of the roads is identical with that of the section served by them, and if the section is injured in its industries by the operation of the law, the roads are likely to suffer in at least an equal proportion. But, passing by this significant fact, it may safely be asserted that the charge that New England or its chief city suffers specially from the operation of this clause of the law, or is affected by the long and short haul clause, in any different manner than is the State or city of New York or any part of the country with which New England or its commercial towns come in competition, is wholly unfounded. As between Boston and the Atlantic ports to the south of it, and as between other New England towns and others to the south similarly situated with respect to the great channels of commerce, there has been since the enactment of the Act to regulate commerce no change in relative rates to and from the interior and to and from the Pacific coast, which can be attributed to the clause in question. The proportions on the other hand have in the main been preserved, and are now what they commonly were before. It has been intimated, rather than asserted, that were it not for the long and short haul

clause, and the consequent necessity for making rates from the West to interior New England points as low as the Boston rates, the railroad companies would be willing to give to Boston the same rates from the West as to New York. That is to say, if the railroad companies were at liberty to load down the commerce of the interior New England towns with excessive rates for the relief of the commerce of Boston with the West, they might then afford to give and would give to Boston the New York rates. Passing without comment the question whether such a result would be to the general public interest of the section, it is sufficient to say that the intimation is without plausibility. The relative rates as between Boston and the other chief Atlantic seaports are not likely to be affected by the rates made to interior New England towns. The competition of the seaboard cities is governed by considerations with which the rates to the towns back of them have little or nothing to do, and when the rates from the West to Boston are reduced relatively to those to New York, Philadelphia, and Baltimore below what they now are, it can scarcely be doubted that the carriers which accommodate the commerce of the other cities named will, from a real or supposed necessity, follow and keep pace with the reduction.

Those who complain of the provision in question as an unwarranted invasion of the rights of carriers appear to overlook the fact that, as enacted in the law to regulate commerce, it is not new. In Appendix E to this report are given the provisions in the constitutions or laws of the several States on the same subject; and it will be found that necessity was seen for a similar provision some time before Congress dealt with the subject at all.

As far back as 1850 it was enacted in Vermont that—

> A railroad corporation whose road is located in the State shall not charge a larger sum for freight, merchandise, or passage of passengers thereon, for a less distance to or from a way-station on said road, than is charged for a greater distance.

In 1882 it was further provided by statute in the same State that—

Two or more corporations whose roads connect shall not charge or receive for the transportation of freight to any station on the road of either of them a greater sum than is at the time charged or received for the transportation of the like class and quantity of freight from the same original point of departure to a station at a greater distance on the road of either of them in the same direction. In the construction of this section the sum charged or received for the transportation of freight shall include all terminal charges: *Provided*, That this section shall not be construed as affecting the right of any railroad company to establish such rate on freights shipped over their line in car-load lots from points outside the State to points beyond the State, as may seem for their best interests.

The State of Virginia declared, by act of 1867, that—

No such company shall charge a greater sum for the transportation of freight over a part of its line than is charged for the transportation of similar freight over the whole length of its line—

a provision which has since been made much more stringent, as appears in the appendix.

Ohio, in 1872, enacted that—

No company or person owning, controlling, or operating a railroad in whole or in part within this State shall charge or receive for transportation of freight for any distance within this State a larger sum than is charged by the same company or person for the transportation in the same direction of freight of the same class or kind, for an equal or greater distance over the same railroad and connecting lines of railroad.

The Legislature of West Virginia, in 1872, enacted that—

Such railroad corporation shall not be permitted to charge for the transportation of freight and passengers, or either, a less sum from one terminus of their road to the other than from any intermediate station to either terminus thereof, nor a greater sum for the transportation of freight and passengers, or either, from any intermediate station to either terminus of road, or from either terminus to an intermediate station, or from one intermediate station to another, than from any intermediate station to either terminus, or from either terminus to an intermediate station, or from one intermediate station to another, where the distance is less.

Here it is seen that the rule laid down is inflexible, not permitting exception.

In the year 1873 the State of New Jersey declared by law that—

Hereafter it shall not be lawful for any railroad or canal company doing business in this State, to charge or receive any greater rate of compensation

for freight upon goods, wares or merchandise transported between way stations or between a terminal station and a way station, than they charge and receive for freight upon such goods, wares and merchandise between the terminal stations of such railroad or canal.

This, it will be perceived, laid down a fixed and inflexible rule that allowed of no exceptions dependent upon circumstances.

The policy of Illinois was declared, by act of 1873, as follows:

If any such railroad corporation shall charge, collect, or receive for the transportation of any passenger or freight of any description, upon its railroad, for any distance within this State, the same, or a greater amount of toll or compensation than is at the same time charged, collected, or received for the transportation, in the same direction, of any passenger, or like quantity of freight of the same class, over a greater distance of the same railroad; all such discriminating rates, charges, collections, or receipts whether made directly, or by means of any rebate, drawback, or other shift or evasion, shall be deemed and taken against such railroad corporation, as *prima facie* evidence of the unjust discriminations prohibited by the provisions of this act; and it shall not be deemed a sufficient excuse or justification of such discriminations on the part of such railroad corporation, that the railway station, or point at which it shall charge, collect, or receive the same or less rates of toll or compensation for the transportation of such passenger or freight, or for the use and transportation of such railroad car, the greater distance, than for the shorter distance, is a railway station or point, at which there exists competition with any other railroad or means of transportation.

The people of Pennsylvania, when adopting their Constitution in 1873, inserted therein the following provision:

Persons and property, transported over any railroad, shall be delivered at any station at charges not exceeding the charges for transportation of persons and property of the same class in the same direction to any more distant station.

This again is without qualification, and it is believed that the railroads of that State have found it greatly to their advantage to comply with this provision, and that the people themselves have never been heard to complain of it.

The State of Massachusetts, by statute in 1874, declared that—

No railroad corporation shall charge or receive for the transportation of freight to any station on its road a greater sum than is at the time charged

or received for the transportation of the like class and quantity of freight from the same original point of departure to a station at a greater distance on its road, in the same direction. Two or more railroad corporations whose roads connect shall not charge or receive for the transportation of freight to any station on the road of either of them a greater sum than is at the time charged or received for the transportation of the like class and quantity of freight from the same original point of departure to a station at a greater distance on the road of either of them, in the same direction. In the construction of this section the sum charged or received for the transportation of freight shall include all terminal charges; and the road of a corporation shall include all the road in use by it, whether owned or operated under a contract or lease.

In the Constitution of Arkansas, adopted in 1874, the following provision is found:

Persons and property, transported over any railroad, shall be delivered at any station at charges not exceeding the charges for transportation of persons and property of the same class, in the same direction to any more distant station.

In the acts of 1874-'75, of North Carolina, it is provided that—

It shall be unlawful for any railroad corporation, operating in this State, to charge for the transportation of any freight of any description over its road a greater amount as toll or compensation than shall at the same time be charged by it for the transportation of an equal quantity of the same class of freight transported in the same direction over any portion of the same railroad of equal distance.

The State of New Hampshire, by an act bearing date in 1879, declared that—

No railroad, owned or operated in this State, shall charge a higher tariff on like classes of freight by the carload, when delivered at any station on its line, than is charged to deliver the same at any station on the road, when the transportation is for a greater distance.

By another section it was declared that nothing above—

shall be so construed as to effect the rights of any railroad owned or operated in this State from establishing such rates on freights shipped over their lines from points outside of the State to points beyond the State as may seem for their best interest.

And by act of September 14, 1883, it was provided that—

No railroad corporation shall charge or receive for the transportation of freight to any station on its road a greater sum than is at the time charged

or received for the transportation of the like class and quantity of freight from the same original point of departure to a station at a greater distance on its road in the same direction. Two or more connecting railroads in this State shall not charge or receive for the transportation of freight to any station on the road of either of them a greater sum than is at the time charged or received for transportation of the like class and quantity of freight from the same original point of departure to a station at a greater distance on the road of either of them in the same direction. In the construction of this section, the sum charged or received for the transportation of freight shall include all terminal charges, and the road of a corporation shall include all the road in use by it, whether owned or operated under a contract or lease.

The State of Nevada, by an act of 1879, provided that—

It shall be unlawful for any person or persons engaged in the transportation of property . . . to charge or receive any greater compensation per carload, or part thereof, of similar property per mile, for carrying, receiving, storing, forwarding or handling the same, for a shorter than for a longer distance in one continuous carriage.

The State of California, in the revision of its Constitution in 1879, provided that—

Persons and property transported over any railroad or by any other transportation company or individual, shall be delivered at any station, landing or port, at charges not exceeding the charges for the transportation of persons and property of the same class, in the same direction, to any more distant station, port or landing.

South Carolina, in 1882, declared it to be unlawful for persons engaged in transportation by railroad—

to charge, collect or receive for the transportation of any passenger or freight of any description upon its railroad for any distance within this State, the same or a greater amount of toll or compensation than is at the same time charged, collected or received for the transportation of any passenger, or like quantity of freight of the same class over a greater distance of the same railroad.

The State of Texas, by statute in 1883, declared that—

If any railroad company shall charge one person more for transporting freight of the same class in equal or less quantities, over its road, for the same or a less distance, than it charges another for the same or a greater distance, all such discriminating rates, charges or collections, whether made directly or by means of any rebate, or other shift or evasion, shall be considered and taken as *prima facie* evidence of extortion and unjust discrimination, which is hereby prohibited and declared unlawful.

The State of Connecticut, by statute in 1885, enacted that—

No railroad company shall charge or receive for the transportation of freight to any station on its road a greater sum than is at the time charged or received for the transportation of the like kind and quantity of freight from the same original point of departure, and under similar circumstances to a station at a greater distance on its road, in the same direction. Two or more railroad companies, whose roads connect, shall not charge or receive for the transportation of freight to any station on the road of either of them a greater sum than is at the time charged or received for the transportation of a like kind and quantity of freight from the same original point of departure and under similar circumstances to a station at a greater distance on the road of either of them, in the same direction. In the construction of this section the sum charged or received for the transportation of freight shall include all terminal charges; and the road of a company shall include all the road in use by it, whether owned or operated under a contract or a lease.

In this provision it will be seen that for the first time in the enactments or constitutional provisions of the several States quoted an exception appears of cases where the transportation is under different circumstances.

The State of Oregon, by act bearing date 1885, declared that—

It shall be unlawful for any person engaged in the transportation of property, as provided in the first section of this act, to charge or receive any greater compensation for a similar amount or kind of property for carrying, receiving, storing, forwarding or handling the same, for a shorter than a longer distance, in the same direction.

It will thus be seen that seventeen of the States previous to the passage of the Act to regulate commerce, had by statute or by constitutional amendment, beginning in 1850 and from then on to 1885, made illegal the charging of a greater compensation for transportation by railroad companies for a shorter than was charged for a longer distance over the same line in the same direction. Some of the provisions were broad and general, while others were narrow and failed to cover all cases which might arise of the kind specified. But with the single exception of the statute of Connecticut, the rule prescribed by them admitted of no exceptions. The Connecticut statute, as has been seen, did not make a greater charge illegal when the circumstances were not similar.

The States of Missouri, Minnesota and Nebraska, by statute, in the same year in which the Act to regulate commerce

was passed, made provision in general harmony with that in the Act of Congress upon this subject, and Iowa and the two Dakotas have done the same thing since.

It is thus seen that fully one-half the States of the Union, by enactments covering a period of forty years, have declared the principle of the long and short haul clause of the fourth section of the Act to regulate commerce to be sound, just and politic, and have been enforcing it, so far as we know, without any considerable objection being made to it from any source. The business of the railroads in these States, so far as it was purely State business, has been made to conform to it, and it is reasonable to suppose that if the managers had found it to work seriously to their detriment there would long since have been organized energetic efforts to change the laws of the States in this particular. We are aware of no such efforts.

Nevertheless, as in interstate commerce there were a vast number of cases in which the greater charge was made upon the shorter haul at the time of the enactment of the law to regulate commerce, it was but natural and reasonable that Congress should proceed cautiously, deliberately and with some regard to the existing state of things, in putting in force this wise and salutary provision. It was but prudent it should make the exceptions it did, permitting of the greater charge on the shorter haul when the conditions and circumstances should seem to justify it, and even permitting what may be called a suspension of the law in special cases, if, in the opinion of the Commission appointed to regulate interstate traffic, it should seem after investigation to be reasonable to do so. Of this permission, however, it is proper to say that the Commission has never been called upon to exercise it. It has in some cases been required to decide upon the question whether such conditions and circumstances existed as would warrant the exceptions made by the carriers themselves, but, in the main, conformity to the law of the fourth section has been so general and the exceptions made were based upon such reasons of *prima facie* necessity, that the supposed autocratic power of suspension has never even been invited.

The provision authorizing the Commission upon application in special cases and after investigation to allow a carrier to charge less for longer than for shorter distances for the transportation of passengers or property, was made in the interest of the carriers, and with a view to relax still more the rule of the statute, and to relieve it entirely from anything like a rigid and unyielding character. Nevertheless the same persons who have assumed to attack the law as injurious to carriers have fixed upon this as a provision of especial enormity, and have denounced it as conferring upon the Commission extraordinary and autocratic powers, which, it is said, should never be allowed to exist in a free country. As the nominal purpose of such an arraignment of the law is to abolish the clause in question and restore the former condition of things, it may be well to consider for a moment what the powers were that were exercised by the carriers themselves before the law was enacted, and whether they were any the less autocratic and extraordinary than the powers which are now conferred upon the Commission. The authority given the Commission has been seen to be to allow in special cases, after public investigation and a showing of the reasons therefor, a greater charge to be made upon the shorter haul where the statute would otherwise prohibit it. The investigation and the showing of reasons are conditions precedent, and the authority is therefore as carefully limited as public powers of a discretionary nature can be. In the requirement of an investigation it is assumed that all parties concerned will have opportunity to be heard and that the interests of all will be considered, and the Commission is authorized from time to time to prescribe the extent to which the carrier may be relieved from the operation of the general rule. The power formerly exercised by the railroad companies was under no legal supervision; it was subject to no requirement of previous investigation; it might be, and commonly was, exercised without opportunity to the parties who must pay the exceptional and oppressive rates to be first heard in respect to their imposition, and without considering any other interests than those of the carriers imposing them. It was, therefore, a despotic authority pure and simple; and

when contrasted with it, the authority which may now be exercised by the Commission sinks into insignificance. The former was autocratic and unchecked; the latter, as is proper in governmental powers, is specially limited and regulated with a view to the protection of all just equities.

It is a very significant fact, as bearing upon the propriety of this section of the law, that in the convention of railroad commissioners, national and State, held at Washington in May of the present year, a resolution was adopted by a strong vote of the State commissioners "that it is expedient that the laws of the several States should be in exact harmony with the provisions of the Interstate Commerce Act" in, among other things, "the regulation of the relations between rates of compensation to be allowed for long and short hauls." This declaration comes from a body of men the great majority of whom, although they represent the people of their several States and may be supposed to have their interests specially in view in what they do on the subject of the regulation of railways, have never been accused of hostility to railroad interests, or of having injured them by the manner in which they have performed their public duties.

It is interesting to know that, prior to the enactment of the Act to regulate commerce, the railway commission in England had, by its decisions, recognized the same principle, although not required to do so by the express words of the statutes under which it was acting.

Concluding what we have to say on this subject, it may safely be assumed, we think, that until the people of the United States shall have become convinced that it is right and proper to burden the local traffic of the country beyond the proper charges for its own transportation to relieve the through traffic from charges which are only just and reasonable, some enactment, recognizing the principle of the long and short haul clause of the fourth section of the law, will always remain in force. And we can not doubt that if the carriers by rail shall cordially accept this principle as being clearly right and just, and shall proceed to eliminate as rapidly as possibly the exceptional cases in which they now make the greater charge for the shorter haul upon like traffic

carried over the same line in the same direction, they will find that not only is the general public benefited thereby, but that their own true interest has been subserved in getting rid of what is now, from its seeming injustice, a constant subject of irritation and unpleasant controversy.

A few words regarding the construction of the rule under examination by the carriers in certain cases may not be inappropriate here.

It having been conceded that the existence of water competition may constitute such a difference in the conditions and circumstances of transportation as will justify the greater charge on the shorter haul in some cases, some carriers appear to have assumed that they are in a clear case of that nature, entirely absolved from any obligation to make the charge at the point of water competition bear any proportion whatever to the charges at other points, but that they may in their discretion lower the former to any extent necessary to enable them to take the business from water carriers and still maintain the rates on shorter hauls at what they would have been if no such lowering had taken place. The result would be in some cases, if the rates made by the roads were allowed to stand, that points where there was water competition to any extent, however small, would be given an advantage in railroad transportation that would be absolutely destructive to previously existing competition of other towns of equal or greater importance on the same lines of railway. In such a case there may be a double wrong; first, in the unjust discrimination as between the points served by the railway, and second, in the driving of water carriers out of the business by rates which are made so low as to be unremunerative, the loss to the carriers by rail being made up by charges on other business higher than would otherwise be necessary. Such a method of making rates we do not understand to be in accordance with the intent of the law, which has for its object to accomplish justice and establish, as nearly as is practicable, equality of right in the matter of transportation by public agencies. It was no part of the purpose of the Act to drive water carriers out of business by means of rates for transportation by rail relatively unjust as between the

patrons of the latter method of carriage; and the carriers by rail do not establish the legality of the greater charge upon the shorter haul by merely showing that the longer haul is in competition with water transportation. They must show in addition to this that the greater charge on the shorter haul if questioned, when compared with that made on the longer haul, is, when all the conditions and circumstances are considered, relatively just and fair as between its patrons at its several stations affected.

In some cases which have come to the notice of the Commission during the past year another and very extraordinary phase of this general subject has been presented. It has been made to appear that railroad companies when rate wars exist among themselves at certain points consider themselves at liberty to reduce the rates at such points to any extent they please, leaving the intermediate rates unaffected. A very striking illustration of the existence of this opinion was given during August last in the rates made from St. Louis and Kansas City to Texas points. The normal rates for a number of years from St. Louis to what are known as Texas common points have been, on the first class, $1.33, falling thence to 40 cents on Class E. On August 1 a reduction began to be made, and the rates, in six days, went down to 50 cents on the first class. The reduction was less on the other classes, but it was considerable on them all. The rate-sheets which were issued in this period contained the notation that the reduced rates did not apply to intermediate points. Some most astonishing results followed. While 50 cents was being accepted for through transportation of first-class merchandise the St. Louis & San Francisco Railway and the Missouri Pacific were charging to some intermediate points as high as $1.10; the St. Louis, Arkansas & Texas as high as $1.15, and the St. Louis, Kansas & Texas as high as $1.20. The monstrous injustice of such relative charges is very obvious, and the Commission immediately called upon the authorities of these roads to put their rate sheets into conformity with the law. It ought to be distinctly understood, without any monition from the public authorities, that a carrier does not by entering upon a rate war gain any new

or additional rights or privileges under the law. The rate war itself in its immediate or ultimate results, or both, is commonly a public mischief, and is very far from furnishing ground for special favors to the parties who engage in it. The carrier who, before taking part in such rate war, was making, as between the certain points, a lesser charge than upon shorter hauls to intermediate points, is bound, when it further reduces this lesser charge, to do so to such extent as to throw none of the burden of it upon intermediate points. Enforcing the law with this understanding of what it requires makes the long and short haul clause tend very greatly to the maintenance of steadiness in rates, and in that respect renders it of great advantage not only to the public at large, but, as is believed by the Commission, to the carriers themselves.

RAILROAD REGULATION IN THE STATES.

On the 29th day of May of the present year the commissioners and other authorities charged in the several States with the regulation of railroads met in convention with this Commission to consider various subjects which were of common interest. An abstract of the proceedings of the convention is given as Appendix F to this report.

Among the resolutions adopted was one—

> That it is expedient that the laws of the several States should be in exact harmony with the provisions of the Interstate Commerce Act on the following topics: The definition and prohibition of unjust discrimination; the prohibition of undue and unreasonable preferences and advantages; the requirement of equal facilities for the interchange of traffic; the regulation of the relations between rates of compensation to be allowed for long and short hauls; the regulations as to printing and posting rates, fares, and charges; the regulations as to notice to be given of advances and reductions in rates; the penalties for false billing, false classification, false weighing, etc.

In Appendix E, to this report, will be found an abstract of the State laws on the subject of railroad regulation, so far as they relate to matters which are covered by or referred to in the Act to regulate commerce. Also of such as relate to ticket brokerage. The provisions on the subject of rates

upon long and short hauls, being of special interest, are copied in full, as are also those which concern the subject of pooling. This abstract is given in view of the recommendation above mentioned, that it may be seen at a glance what action is needful to give the recommendation effect, and the Commission calls especial attention to the subject and commends it most earnestly to the legislative authorities of the several States. There is no room for doubt that the Federal and the State commissions will act in entire harmony in the endeavor to make their respective powers accomplish, as fully as possible, the purposes for which they were conferred; but they are thwarted now in very many ways because the laws emanating from many different sources are so far dissimilar that the just provisions of one may be violated with impunity under the supposed protection of another. The Commission has heretofore called attention to some aspects of this general subject, and it does so again elsewhere in this report. While the existing differences between State and national law continue the public is sufferer therefrom, and such differences are an element of embarrassment to the efficient enforcement of the Act to regulate commerce.

RAILROAD REGULATION IN FOREIGN COUNTRIES.

In Appendix G will be found very complete information regarding the relations of railways to the governments of foreign countries. This embraces such provisions as are made by law for the regulation of transportation by rail, and also such as exist for the purchase of railroads by the government where they have been constructed and are owned by private companies or corporations. The existing Canadian and English legislation having been very fully given in the annual report for 1888 (pages 80–103), it is not reproduced in this appendix, but an historical summary of English law is given, and also a law of Canada aimed at the suppression of ticket brokerage. In collecting this information it has been found impossible in the case of some countries to procure the laws themselves, and the consular reports in some cases have been made use of, and also publications made by individuals who have made a special study of the

laws and have besides seen something of their practical workings. What is given, it is believed, will be sufficient to enable the reader to obtain a very complete understanding of the condition of foreign law so far as relates especially to regulation. The laws regarding the construction of railways are far too voluminous to be reproduced here, even in the form of abstracts.

THE GOVERNMENT-AIDED RAILROAD AND TELEGRAPH LINES.

In the last annual report the Commission referred to the duties which were imposed upon it by the Act of Congress of August 8, 1888, being chapter 72 of the Acts of the Fiftieth Congress of the United States (25 U. S. Stats. at Large, page 382). This Act required the Commission to call upon the several railroad and telegraph companies to which the United States had granted any subsidy in lands, or bonds, or loan of credit, for the construction of either railroad or telegraph lines, for copies of certain contracts and agreements, and also for reports, describing with certainty the telegraph lines and property belonging to them respectively, and the manner in which the same were being used and operated, and the telegraph lines and property upon any roadway in which any other person or corporation claims to have a title or interest, and setting forth the grounds of such claim and the manner in which the same were being then used and operated. The Commission showed in its report that its duties under the Act had been performed, and that of the several companies upon which it had called for copies of contracts and agreements, and also for reports, the most of them failed to comply entirely, and that no one had fully met the demands of the law. The Commission thereupon, as was required by said Act, informed the Attorney-General of the said failure to comply, that he might proceed to deal with the cases as he should deem necessary. The Commission has now to report that again during the last year it sent out to the several companies to whom the Act relates the proper blanks for report, such as is required by the Act, but that in no instance has a report been received in response to its call.

TICKET BROKERAGE.

The subject of brokerage in railroad tickets, or "scalping" as it is usually termed, has to some extent been referred to in previous annual reports of the Commission, and has also been commented on more at large in special reports made upon investigations. The last annual report recommended specific legislation by Congress to restrain as far as possible this illegitimate and reprehensible business, now very generally regarded as one of the worst incidental evils connected with transportation.

A bill was introduced in both Houses of Congress at an early period in the last session, embodying the essential features recommended by the Commission. It failed to pass and in fact is believed not to have been reported by the committees of either House.

It is understood that strenuous opposition was made to the passage of the bill by the ticket scalpers of the country. It is believed upon trustworthy information in possession of the Commission that railroad managers generally are in favor of efficient legislation for the overthrow of this evil, and that a strong public sentiment exists against its toleration.

With the great increase of railroads and the competition existing among them for patronage, ticket brokerage has become a large business and very profitable to those engaged in it. It is carried on with the greatest amount of boldness and success in the larger cities of the country where the most eager competition exists between railroads. A few illustrations will serve to show the extent to which the business has been carried.

From various reports received by the Commission it appears that in New York City there exist thirteen scalping offices, in which including proprietors and clerks, about thirty persons are employed, at an estimated expense for office rent and clerk hire of $20,000 to $25,000 a year, and with an estimated annual profit from the business of $90,000 to $100,000; that at Chicago there are fifteen scalping offices, whose combined annual expense for rent and clerk hire amounts to about $70,000; that at Cincinnati there are nine scalping

offices, with an annual expense for rent and clerk hire of about $20,000; and that at Kansas City there are seven scalping offices, with an estimated annual expense for rent and clerk hire of about $18,000. When it is considered that this business is carried on in nearly all the principal cities of the country, and that the net profits probably amount to four times the expenditure for carrying it on, it is evident that the profits from this illegitimate business exceed the sum of a million dollars annually.

The ticket broker has no necessary, useful or legitimate function. He is a self-constituted middleman between the railroad and the passenger. All railroads have accessible and convenient offices and agents for the sale of tickets. The public can be fully accommodated by the regular agencies of the roads without the intervention of superfluous and obtrusive middlemen.

As there could be no field of operation for this class of persons if the railroad companies obtained full established rates for all transportation furnished by them, the expenses of the business and the profits made by those who conduct it must necessarily in the first instance come out of the carriers, and represent simply the discount suffered by them from their established fares and the resulting diminution of revenue. But indirectly this diminution of revenue is made up by the public, for while the business continues the carriers have it in mind in making their rates, and charge higher rates than would be necessary for fairly remunerative revenue if there were no such drain upon them to support the auxiliary force of scalpers.

The business is therefore hurtful both to the roads and to the public in a financial sense, and the extent of the injury it is scarcely possible to measure. The harm done by an army of unscrupulous depredators upon a legitimate business can not be computed by any known standard. Lawless greed recognizes no limits, and weak compliance by its victims only stops at exhaustion. But the moral injury both to railroad officials and to the public is even greater. To railroad officials the business serves as an invitation and an excuse for dishonest practices. It is used as a cover, deceitful and

transparent it is true, for evasions of law and for dishonorable violations of compacts among competing roads to maintain agreed schedules of rates. The public morals are affected by the natural inference that railroad officials are deficient in sense of honor and integrity, and that if the railroad code of ethics permits one road to cheat another it is equally permissible for the public to cheat the railroads. The inevitable tendency of the practice, therefore, is to eliminate the moral element and the rule of action that element inculcates—business honor—from the practical field of transportation.

In whatever aspect ticket scalping may be viewed, it is fraudulent alike in its conception and in its operations. The competition of roads affords the opportunity for the work of the scalper. Without rival roads competing for business he could have no field. The prospect of selling more transportation at a discount than at the established rate, and so diverting business dishonestly from a competitor, is the temptation to a road to let a scalper do for it secretly what it does not dare do openly. The weak excuse of every road that trangresses in this manner is that some competitor does it. Fraud, therefore, is the incentive to the business. And in its conduct every step is one of actual fraud. The scalper's vocation, the necessity for his occupation, is to sell transportation at less than published and established rates; in other words, below lawful charges. Every such sale is a fraud upon the law, a fraud upon competing roads, and a fraud upon the stockholders and the creditors of the road for which the sale is made.

But bad as these transactions are they are not the worst. There are other branches of the business which we are told by railroad officials are practiced, to their actual knowledge, which are even more culpable. These are said to embrace such acts as dealing in tickets and passes that have been stolen, and tickets that have already been used but not defaced or canceled by conductors, as also in tickets fraudulently altered in respect to dates or extent of journey, and spurious tickets to which the use of some artful device gives the appearance of genuineness. In such cases an imposition

is practiced either on a railroad or upon a passenger, certainly upon the latter if the fraud be detected. Whether all or only some brokers engage in these fraudulent practices, or whether the frauds by which stolen, defunct or altered tickets are palmed off on the public and on the railroads as well, are perpetrated by brokers themselves, or by others acting in collusion with them, are not material. The acts are incidents of the business, and arguments of great potency for legislative action to eradicate the evil.

One might suppose that a practice of this character could no more be defended than larceny or forgery, but strange as it may appear it is defended, before legislative bodies and elsewhere, and the right to carry it on unmolested is demanded. It is urged by way of defense that through the ticket scalper a portion of the public get lower rates and therefore his operations are in the interests of the public. The circumstance that lower rates so obtained are forbidden by the fundamental principle of the law, that equality of charges for equality of service shall be made, and that such rates are unjust discrimination, is wholly disregarded by this defense.

It is also said that railroad tickets are merchandise, and may be bought at wholesale at any price for which they can be procured, and may be sold at retail for any price the purchaser will pay. This, again, ignores the plain requirements of the law, that a railroad as a public agency must establish and publish its fares and charges, and sells its transportation only at its established rates, and that it is declared a criminal offense to do otherwise. The merchandise theory is an entire perversion of the nature and objects of railroad tickets. A railroad ticket, instead of being merchandise, is in law only a receipt or voucher for the payment of the cost of a journey, and evidence of a contract on the part of the railroad to carry the passenger. It imports that the lawful price of carriage has been paid, and that the holder is entitled to the extent and kind of transportation indicated by the instrument.

If it were practicable fares might be paid on the train, but the use of tickets has been found a great convenience both to railroads and to passengers, especially to railroads in the

economy of the time of train agents and as a protection against negligence or dishonesty on the part of such agents. If, in spite of the strong reasons from the railroad standpoint for the use of tickets, they are to be used clandestinely by the consent of railroads to violate the law and diminish earnings, it is questionable whether it is important, from the standpoint of the public, whether the scalping is done by professional scalpers or by the direct agents of the road.

Another defense of the business is put on the benevolent ground that passengers holding tickets for a considerable journey often change their minds, or are obliged by some happening to stop short of the destination, or to return without making the whole journey, and that by the charitable interposition of a broker the tickets are taken off their hands at no great loss, whereas otherwise the loss might be considable. This overlooks the obvious fact that it is quite as convenient for a passenger to have his unused ticket redeemed at the office of a railroad upon which he is traveling as at the office of a broker, and that at a railroad office he can receive the full pro rata value of the unused part of his ticket without losing the broker's profit.

These are, in brief, the grounds upon which ticket brokerage is publicly defended, and which are urged to prevent legislation for the suppression of an acknowledged abuse of large and growing dimensions, seriously injurious in its character, bad in its influence, and owing its existence to the vices of human nature.

With the view of procuring a general and authentic expression from railway officials and others upon the subject of ticket brokerage, the Commission, early in June last, issued a circular calling pointed attention to the practice and requesting answers to the following questions:

First. Whether the existence of this business is not a serious public evil.

Second. Whether the profits of the business and the cost of transacting it do not necessarily either come from the revenues of the railroad companies, or tend to increase the charges which they impose upon passenger traffic, with a view to a sufficient revenue.

Third. What are the chief causes which afford a field for the business and which are responsible for its existence.

Fourth. If, in your opinion, the business should be brought to an end, what remedy or remedies should you suggest for that purpose.

This circular was sent to the railroad commissioners of all the States in which such officers exist, and to sixty-five officials of leading roads, and to some others connected with transportation, many so addressed being men of national reputation and of high character and standing. Replies have been received from forty officials of railroads, from ten State commissions, and from some other sources. The circular and the substance of the replies are given in Appendix H.

The answers received furnish a body of testimony of the most convincing character. They are unanimous and emphatic in representing ticket scalping as a serious public evil. They declare it to be an unmixed evil in all its phases, detrimental alike to the public and to the railroads, and they agree that the evil is twofold—in its effect upon the morals of the people and its effects upon the business interests of the roads.

Illustrations are given of fraudulent practices connected with the scalper's occupation, some of which have already been indicated. There is scarcely a limit to the variety and boldness of the operations by which their thrift is nourished. One general passenger agent writes as follows:

They (meaning the scalpers) feed on the weaknesses of railroad human nature and the dishonesty of all classes and conditions of society, who have anything in the shape of railroad transportation to dispose of, whether secured by honest or dishonest means, and then they do not hesitate to change dates and limits and signatures until corruption is stamped all over them.

Another agent writes:

The crooked work in connection with the alteration in tickets and the handling of forged tickets is liable to result in serious injury to the public. I feel sure that such practices would not prevail were the ticket brokerage business brought to an end by the enactment of a national law.

In answer to the second inquiry one general passenger agent writes that—

The profit of scalping and the cost of transacting the business necessa-

rily come from the revenues of the railroad company, and this fact has a tendency to increase the charges necessary to yield a sufficient revenue.

Another writes:

The profits of the business and the cost of transacting it do come from the revenues of the railroad companies, and necessarily increase the charges which they impose upon their passenger traffic.

Still another, a joint agent of several lines of road, writes:

The maintaining of scalping offices does greatly impair railroad revenues, and tends to increase local rates.

Another, who occupies a position affording the best opportunity for observation, writes:

The profits of the business and the cost of transacting it come apparently from the revenues of the transportation companies, but really from the traveling public by reason of the increased rates that the transportation companies are compelled to charge to protect their revenues against the scalper. . . . If it were not for such losses the transportation companies could well afford to make lower rates to the traveling public.

Others write to the same effect.

As an example of the bad results of dealing with brokers a general passenger agent of one of the principal railroad systems of the country asserts that passengers often dispose of the unused portion of their tickets to brokers for less money than they would receive from the railroad company if presented to the company for redemption.

The third inquiry in the circular, relating to the chief causes which afford a field for the business, and which are responsible for its existence, was fully answered by the communications received. Both the public and the railroads, it is said, have a share in the responsibility. The too general desire on the part of the public to get goods or service at less than established prices, and the avidity of nearly every railroad to do a greater amount of passenger business than any competitor, are said to be among the primary causes. Other and immediate causes, however, are specifically set forth. These are as follows:

First. The business is largely sustained by the direct en-

couragement and co-operation of railroad companies themselves, in the payment of commissions to scalpers, in placing with them blocks of tickets in times of rate wars, and in frequently turning over to them the return portion of round-trip tickets. The absence of good faith between rival companies opens a door for the employment of the broker. At the outbreak of a cut in rates agreements to maintain schedule rates are ignored, the services of the broker are invoked, and he is supplied with tickets at greatly reduced rates, or is paid heavy commissions which may be, and are expected to be, divided with the passenger.

Second. Excursion, tourist, and mileage tickets are all factors, and important ones, in the maintenance of the scalping business. The first two are often purchased by a class of travelers who do not contemplate their use except for one way. After being so used the return portion of the ticket is sold to a broker, who in turn sells to some traveler, and the difference in rate between a round-trip ticket and one good in only a single direction is divided between the broker and the passenger, the former getting the larger share. The mileage ticket, which many roads do not attempt to confine to the original purchaser, is also largely utilized by brokers, and rented out by piecemeal to travelers.

Third. Dishonest employees of railroads contribute in no small degree to keeping up the business of furnishing the scalpers with tickets which have been used but not canceled; and stolen and counterfeit tickets also furnish their contribution to the stock of the broker.

Fourth. Tickets given by railroad companies for advertising in newspapers, and to men in business, such as hotel-keepers and others, as well as passes, are made merchandise of and converted into money; the broker being the medium through which they get into the possession of persons who have no right to their use, and who often find it necessary to make misrepresentations to avoid the consequences of detection.

The final inquiry, whether the business should be brought

commerce by rail which is not subject to either State or Fed- to an end, and the means to be employed for the purpose, receives an emphatic answer. The leading railroad officials of this country are a unit in the recommendation of a national law for the suppression of the business, embodying the general features of the Canadian statute. Several of the State legislatures have enacted laws of a similar character, but in the absence of a national statute they can not be made as effective as they would be with a national statute on the subject. An abstract of these laws is contained in Appendix E.

It is stated by a Canadian railroad official that there is not a ticket scalping office in Canada. This tends to show the effectiveness of a general law, and renders it probable that like results might follow from such a law in the United States. The Canadian statute, in substance, forbids the sale of tickets by any one except a railway station agent or the regularly appointed agent of a legitimate transportation company, and fixes full responsibility upon the company whose ticket he sells for his acts, and puts it in the power of any person to make complaint and prosecute for violation of the law. The law also provides that all unused tickets or portions of tickets shall be redeemed by the issuing company. This takes away any excuse on the part of the public for dealing with outsiders.

These features are embodied in the Act now pending before Congress, together with penal provisions for the punishment of offenders. The two safeguards that are deemed essential, and that it is believed will work a substantial cure of the evil, are, first, the limitation of the sale of tickets exclusively to duly authorized agents of the company, who shall publicly display their license or certificate; and, second, the redemption on a fair basis, by the issuing company, of all tickets not used in their entirety.

THROUGH ROUTES AND THROUGH RATES.

In the second annual report of the Commission to Congress attention was called to the fact that carriers whose lines were entirely within the limits of single States, and therefore

supposed themselves entirely exempt from the Act to regulate commerce, claimed the right to make at will such arrangements as they saw fit in respect to the interstate traffic carried over their lines, and in effect to establish discriminations therein as between connecting lines, and even between persons and places. This state of things the Commission thought ought not to be allowed to continue, and it was strongly urged that amendment be made to the third section of the Act so as to better provide for through traffic at through rates over connecting lines. This recommendation was repeated in the third annual report.

The matter is so important that the provision of the Act bearing upon it is here repeated.

In the first section of the Act it is declared:

> The provisions of this Act shall apply to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water, when both are used under a common control, management, or arrangement, for a continuous carriage or shipment, from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, etc.

With the proviso that—

> The provisions of this Act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property, wholly within one State, etc.

In the third annual report the Commission discussed somewhat fully the importance of uniformity in the regulation of all the railway transportation of the country, and as a means to that end the desirability of State regulation in harmony with the provisions adopted by national authority. The reasons for this uniformity were given at some length, and it was shown how close and interdependent are relations between State and interstate transportation, and how the exercise of State authority in the regulation of State traffic by rail must necessarily to some extent embarrass the regulation of interstate traffic by Congress, unless both are in substantial harmony.

It has come to the knowledge of the Commission within the year, that in some cases roads commonly known and con-

sidered as State roads, and which claim entire exemption from the provisions of the Act of Congress, and refuse to join with interstate roads in making through routes and through rates, have been exercising the authority to make rates upon their own lines, on an assumption that, as to interstate traffic, they were exempt as well as from State authority and State regulation. Some cases are reported in which the through rates upon interstate commerce have been made largely to exceed the sum of the local rates for like traffic carried over the same lines and between the same points. The State Commission of Florida recently brought to the attention of this Commission the fact that whereas the sums of the locals between a named point in Florida upon the one road and another point in Georgia on the other was a certain specified sum, when the freight carried in Florida was not interstate, the combined charges when the traffic was interstate was more than 60 per centum greater. This discrepancy resulted apparently from an attempt on the part of one of the roads to compel the delivery of the interstate traffic to it at a certain junction point, which would secure to it a longer transportation on its own line than if it were delivered elsewhere, the charge if it were delivered elsewhere being increased by an arbitrary which made it greater than the charge on State traffic. Some of the resulting burdens upon interstate traffic where compared with those upon State traffic were relatively even more excessive than in the case above instanced.

Where excessive rates are thus found to exist they may appear upon investigation to have been imposed arbitrarily and with no other thought than to take advantage of the situation to obtain the highest possible remuneration for the particular service. Very often, however, they are to be traced to unfriendly relations between connecting roads, which lead to a failure to come to agreement upon rates for transportation from points on the one line to points on or beyond the other, and upon a division of such rates between them. The excessive rates which, in such cases, one road imposes are quite as likely to be designed to divert traffic from or otherwise embarrass the other as to have any other purpose.

It can not, for a moment, be conceded that there is any

eral authority under existing laws. A State road may not be compellable, under the Federal law as it now stands, to unite with other roads in through tariffs upon interstate traffic, and may claim with some plausibility that it is not compellable to carry persons or property over its line otherwise than as a State road at State rates. If, however, it persists in asserting exemption from Federal law, and in declining to make rates upon interstate traffic as such, it thereby asserts, in the most practical and emphatic manner, that all its traffic is State traffic; and has no excuse whatever for imposing upon any part thereof rates which exceed what the State law permits, or what the road itself consents to accept for like service upon other like traffic. The very claim it makes to being exclusively a State road estops it from making such impositions. There can be no more right to discriminate in charges against a portion of the traffic carried because of the shipper having directed its transportation into another State by some other agency, than there would be to make like discrimination on grounds personal to the shipper himself. The Commission is of opinion, however, that whenever the State road gives, receives or acts upon through shipping bills, for the transportation of interstate traffic over its line, or even receives and carries such traffic for delivery to another carrier, when its destination is distinctly made known and is a point beyond the State boundary, it thereby, as a carrier of interstate traffic, becomes subject to the Act to regulate commerce, not only as to making and observing of rates, but as to the filing of rate-sheets also.

The Commission is fully aware that a construction of the Act to the effect here stated would render obligatory the filing of rate-sheets and reporting to the Commission by nearly or quite every railroad in the country; but the inconvenience in this to any one road would be insignificant when compared with the benefit to the public. At the same time, obedience to the law regarding interstate traffic ought not at all to interfere with any proper regulation of that which is legitimately State traffic by State authority. Mischief would only arise when the State law was found to be so far variant from the Federal law that the enforcement of the former would

tend to preclude proper regulation under the latter. But it is hoped that the possibility of this will be prevented by State laws being made harmonious with Federal law, as elsewhere recommended.

The power to require through routes and rates for through traffic is not alone important where one or more of the roads assume to be State roads exclusively, for it is sometimes found that a carrier which operates a great system of roads, in order to annoy or injure a rival, will refuse to give any but long, circuitous and perhaps expensive routes for some portions of its traffic when direct routes would be perfectly feasible, and very much more to the convenience and interest of shippers and the general public.

The power to cast upon the public the consequences of rivalries and contentions between carriers who owe their existence to public authorization, and who are nominally created for the public benefit, can not perhaps be wholly taken away or precluded by any possible legislation; but it ought to be restricted within the narrowest limits which shall be found practicable, and no restraint which could be imposed upon it could be subject to less exception than that which would compel the making of reasonable through routes for through traffic as between connecting roads. Some objection has been made on the part of carriers to the granting of authority for this purpose, on the ground of the possible abuse, and also that the carriers themselves will be impelled by their own interest to make all such arrangements as shall be really needful. The first objection is easily raised to the grant of any new governmental power, and unless supported by very forcible reasons may well be treated as merely formal and perfunctory; the second is already conclusively demonstrated by the experience of the country to be unfounded. The cases in which actual inconvenience and injustice are caused to the business public through the unfriendly action of rival carriers in the refusal to give proper accommodation by through routes and through rates are numerous, and sometimes not only annoying but very injurious. It ought not to be in the power of the carriers to perpetuate this injustice.

STATISTICAL REPORT OF THE COMMISSION.

The report of the statistician for the year ending June 30, 1889, shows that the railway property of the United States is controlled by 1,705 organizations. Of these 609 may be classed as independent roads, 472 as subordinate roads, 148 as roads owned by private individuals; the balance being small lines, feeders to great systems. The mileage operated is reported at 153,385.37. The number of men employed is 704,743, showing that 459 men are employed for every 100 miles of line. This shows greater efficiency as regards the amount of work done than is attained on foreign roads. For example, comparison in this particular is made with England where there are 346,426 men employed, which gives 1,748 men for every 100 miles of line. The efficiency of the men employed on American railways is shown by the fact that each engineer has carried what is equivalent to 2,274,455 tons of freight one mile and 382,362 passengers one mile. The total number of passengers carried by rail in the United States was 472,171,343 and each passenger traveled on the average 24.47 miles. This shows a total passenger mileage of 11,553,820,445. The total number of tons of freight carried was 539,639,583; the average haul for each ton of freight was 127.36 miles, showing a ton mileage of 68,727,223,146. If the number of miles traveled is divided equally among the inhabitants of the United States each inhabitant would have traveled 175.58, or if the amount of freight carried should be equally divided among the inhabitants of the United States it would appear that 1,041.32 tons of freight would have been carried one mile for each person.

The table showing the equipment of railways is especially interesting. It shows 29,036 locomotives, of which 8,079 are passenger and 15,140 are freight locomotives; 7,706 passenger locomotives and 8,743 freight locomotives are fitted with automatic train brake. There are 961,119 cars used, of which 25,665 are in the passenger service and 854,031 in the freight service; 23,540 passenger cars and 66,513 freight cars are fitted with the automatic train brake; 23,348 passenger cars and 46,644 freight cars are fitted with automatic coupler.

The table giving the style of couplers shows that 80,510 automatic couplers are in use; these couplers are of 39 different styles. The analysis of equipment shows that there are on the average 19 engines per 100 miles of line; that there are 557 freight cars per 100 miles of line, and 17 passenger cars per 100 miles of line. It shows further that the ton miles accomplished during the year are, for a freight engine, 4,538,786, and that the passenger miles accomplished by a passenger engine in a year are 1,430,105.

The statistics of accidents show that during the year covered by the report 310 passengers have been killed and 2,146 passengers injured. This shows that one passenger has been killed in every 1,523,133 passengers carried, and one passenger injured in every 220,024 passengers carried. The corresponding rate in England for the year 1888 is one passenger killed for every 6,942,336 carried, and one passenger injured for every 527,577 carried. This discrepancy may, perhaps, be explained by the fact that the number of miles traveled per ticket is in this country much greater than in England, and also by the fact that English roads employ more men in proportion to the number of passengers carried than do American roads. Of employees in the United States, 1,972 have been killed and 20,028 injured during the year. These figures shows that one death occurs for every 357 employees, and one injury for every 35 employees. Or, if a similar statement be made for trainmen, that is to say, for engineers, firemen, conductors and other trainmen, one death occurs for 117 employees and one injury for every 12 such employees. The report gives in detail the number of casualties of every kind.

The gross earnings for the year ending [illegible] of tracks, yards and sidings are $[illegible] or $[illegible] per mile of line; and the operating expenses including [illegible] of tracks, yards and sidings are $[illegible] or $[illegible] per mile of line. The ratio of operating expenses to earnings is [illegible] per cent. The average receipts per ton per mile for freight carried the entire distance on all the roads in the United States are [illegible] or [illegible] per mile of line. The average passenger rate per

the amount of $82,110,198, or $535 per mile of line, which leaves surplus from operations of the year of $19,278,538, or $126 per mile of line.

Another interesting table in this report shows the amount of bonds which fall due in each of the years from 1889 to 1939, inclusive. The total amount of stocks is $4,251,190,719, of which $847,740,399 are owned by railway corporations. The total amount of bonds is $4,267,527,859, of which $304,-232,502 are owned by railway corporations. From this it appears that the total stocks and bonds representing railway property in the hands of the public is $7,366,745,677. The report further shows that the passenger earnings have increased relatively to the freight earnings from 30.46 per cent. of total earnings in 1888 to 31.10 per cent. in 1889, while freight earnings have decreased relatively to the passenger earnings from 67.35 per cent. in 1888 to 66.82 per cent. in 1889. It is to be understood, however, that in the passenger earnings was included the earnings from the carriage of mail and express.

The returns upon railroad investments are also shown by the same report. Of the total amount of railroad stocks, it appears that $2,621,439,792, or 61.67 per cent. of the whole amount, paid nothing whatever in dividends during the year; that $366,452,174, or 8.62 per cent. of the whole, paid less than 4 per cent.; that $309,367,995, or 7.28 per cent. of the whole, paid from 4 to 5 per cent.; that $387,450,453, or 9.11 per cent. of the whole, paid from 5 to 6 per cent.; that $182,-103,482, or 4.28 per cent. of the whole, paid from 6 to 7 per cent.; that $187,724,246, or 4.41 per cent. of the whole, paid from 7 to 8 per cent.; that $101,970,652, or 2.40 per cent. of the whole, paid from 8 to 9 per cent.; that $94,681,925, or 2.23 per cent. of the whole, paid 9 per cent. and upwards.

Of railroad bonds it appears that $775,851,795, or 18.19 per cent. of the whole, paid nothing; that $24,125,836, or .56 per cent. of the whole, paid under 1 per cent.; that $47,998,-840, or 1.13 per cent. of the whole, paid from 1 to 2 per cent.; that $88,341,990, or 2.07 per cent. of the whole, paid from 2 to 3 per cent.; that $297,371,502, or 6.97 per cent. of the whole, paid from 3 to 4 per cent.; that $594,977,208, or 13.95

per cent. of the whole, paid from 4 to 5 per cent.; that $1,095,-170,534, or 25.66 per cent. of the whole, paid from 5 to 6 per cent.; that $835,871,605, or 19.59 per cent. of the whole, paid from 6 to 7 per cent.; that $437,599,649, or 10.26 per cent. of the whole, paid from 7 to 8 per cent.; that $70,218,900, or 1.62 per cent. of the whole, paid 8 per cent. and upwards.

That so enormous an aggregate of these investments pay nothing, or a small percentage, is significant of reckless railroad building, and, no doubt to some extent, of reckless railroad management and inflated capitalization.

The long time that necessarily elapses after the expiration of the period for which the carriers now make their annual reports before the reports can be obtained from them tabulated, classified and published, seems, in the opinion of the Commission, to render it highly desirable that reports should be made for periods less than a year. The roads, especially the most important, are accustomed to give out at short intervals what their current earnings and expenditures are, and their accounts are so kept that it would be no great burden to them to make quarterly reports, or even monthly reports, to the Commission, and these could be given to the public in an authentic form when received, and also to Congress if called for, and they could be kept as a permanent record with the Commission where they would become more and more valuable from year to year in connection with the subsequent reports. The Commission is now obtaining from many of the leading roads of the country monthly reports, and it recommends that section 20 be so amended as to provide that in addition to the annual reports now required to be made, the Commission shall have authority to call for more frequent reports relating to a few of the features of transportation of general public interest.

It is of course well understood by those who are familiar with the Act to regulate commerce, that a very large portion of the capital invested in transportation by rail is so invested that those employing it do not come at all under the regulation of the Act, and the capital itself and the income thereof do not appear in the statistical work of the Commission. If there is any importance in obtaining statistics of the capital

made use of in such transportation, and of the results therefrom, the returns made ought to be complete, since otherwise they tend to mislead instead of giving accurate information.

The Commission is not now authorized to require reports from individuals, companies or corporations owning bridges, depots, stations, stock yards, elevators or other terminal or connecting facilities made use of by the carriers subject to the provisions of the Act in the regular transaction of the business of transportation; nor from individuals, companies or corporations owning rolling stock or floating equipment, or any other property used by common carriers subject to the provisions of the Act in the regular transaction of the business of transportation. This, we think, is an omission which should be supplied, and all such parties should be required to report, to such extent at least as may be necessary for accurate transportation statistics. It would be understood, of course, that the requirements of this report would not in other respects subject the parties indicated to the authority of the Commission. Until such reports are secured the statistics of transportation by rail must necessarily be exceedingly imperfect.

THE PAYMENT OF COMMISSIONS.

By common consent the payment of commissions to influence traffic—especially passenger traffic—is one of the most disturbing, wasteful, and useless for any good purpose of the transportation evils of the day. The subject has been treated at large in former reports of this Commission, particularly in the second annual report, for 1888. What was then said related chiefly to the payment of commissions in connection with passenger traffic. The features of the practice then pointed out and commented on were, the manner in which it is carried on, the reasons urged by some in support of it, the insufficiency and futility of these reasons, the injurious effects upon the revenues of roads and the extent to which their revenues are diminished, the discriminations produced among passengers, and the harm done to stockholders and investors in railway securities. It is not now deemed necessary to repeat what was then set forth. It is only important to add

that the additional experience of two years bears out the statements of fact then made, and fully confirms the views expressed.

The subject was again briefly referred to in the annual report for 1889, and legislation was recommended for the prohibition of the payment of commissions by one railroad company to agents of another railroad company for influencing passenger transportation. A bill was introduced in Congress at the last session to give effect to this recommendation, but has not yet been acted on by that body. The matter has also been incidentally referred to in this report in connection with ticket brokerage.

There can be no doubt that legislation to make the payment of commissions unlawful is demanded by many weighty considerations, and that such a measure is generally favored by conservative railroad interests. Railroad associations and railroad companies have earnestly struggled with this abuse for a long time, and voluntary agreements have been repeatedly entered into to bring about its discontinuance, but so long as the practice itself is not put under the ban of the law it is in the power of one or two unimportant roads in any group of competing roads to defeat agreements resting only on the good faith of parties, and to keep alive the wasteful and demoralizing practice.

As an illustration of the efforts, and also of the anxiety, of railroad associations on this subject, it may be noted that at a recent meeting of railway officials at which twenty-five leading railways were represented by some forty officials, including presidents, vice-presidents and traffic managers, after a statement showing the complications which had arisen through the payment of passenger commissions, the following resolution was unanimously adopted:

Resolved, That this association reaffirms its position against the payment of passenger commissions, and asks the chairman and vice-chairman of the joint committee to endeavor to get all lines to agree to the same, and in case they do not, to call a meeting of the joint committee not later than December 20, 1890, to receive such recommendations as they may offer in relation to this subject.

It is well known that the voluntary action of railroads and

railroad associations has been in this direction for several years, but all such action must continue to be largely futile so far as any permanent abatement of the evil is concerned until there shall be appropriate legal enactment to prohibit the practice and make it criminal.

In brief, the reasons for such legislation may be summarized as follows:

First. The payment of commissions tends to the constant demoralization of passenger rates, and leads to violations of the law that are difficult to reach under existing statutes.

Second. It leads to unjust and flagrant discriminations between passengers by the division of the commissions between the agent and the passenger.

Third. It serves as an incitement to agents to discriminate between connecting roads, and to divert travel to roads paying the largest price for transportation.

Fourth. It tends to keep the schedule rates of transportation higher to reimburse from a portion of the public for the discounts made in the form of commissions.

Fifth. It saps the fidelity of ticket agents to the companies by which they are employed.

Sixth. It is an enormous drain upon the revenues of roads by which commissions are paid. And the loss of revenue is not confined to roads paying commissions, but affects in a corresponding degree other roads that find themselves compelled to make open reductions of rates to meet the secret reductions effected by means of commissions. As was said in the report for 1889:

> The money so spent of right belongs to the stockholders or should be remitted to the public in reduced fares. If the rates are not in fact too high the money wasted for commissions should be expended in improved service or towards the safety of passengers or employees.

Seventh. It is an illegitimate waste of money, from which no permanently good results can possibly accrue. When

done by one company it is certain to be done by other competing companies, and when all competitors do it, it can be of no advantage to any.

It is difficult to give accurate statistics showing the amount of money annually wasted in this manner. The total is acknowledged to be very large and to reach millions of dollars. Official reports, it is believed, are not yet sufficiently full and general to even approximate the gross sum. From the reports of 49 roads to this Commission in 1888 it appeared that the amounts paid in commissions by those roads aggregated $1,078,128.83, and that 8 only of those companies had expended for this purpose the sum of $812,884.07. By the annual reports for the year ending June 30, 1889, the payment of commissions by 108 companies is shown to have aggregated for the fiscal year the sum of $1,729,491.55, and 11 companies report that commissions paid were included in other accounts and their amount is not specified. The sum of $1,097,129.99 is reported by 9 only of these roads to have been paid in the form of commissions.

CONSOLIDATION OF ROADS.

In the last annual report, pages 76 to 82, inclusive, something was said respecting the constant tendency to the consolidation of roads and the absorption of weaker lines by the stronger which goes on contemporaneously with the aggregation and combination of capital invested in other business pursuits, especially those which require large means and the employment of a considerable number of men. That this tendency has continued as strong and as active during the last year as it was during the year preceding will be evident from the fact that it has come to the official knowledge of the Commission that 4,496 miles of road has within the year passed from the control of the corporations previously operating the same, by purchasing, leasing or otherwise, to the management of other corporations, being in general merged in stronger systems. This, however, is far from being a full statement of the absorption of roads by others, but such information as the Commission is in possession of in regard

to other roads, being derived only from the public press, or from common rumor, is not sufficiently verified to be given in this report. What is said, however, is sufficient to give conclusive evidence that the tendency of consolidation is still active, and the Commission is aware of no existing forces, legal or otherwise, that are at all likely to bring it under control. The compulsory making of through routes and through rates might in some degree remove the occasion for consolidation, since one road would not then have the power to embarrass or block the long haul of another, as it may now do and sometimes does, and the roads claim that if they were, as formerly, unrestricted as to divisions of their business the inducement to consolidation might not exist in some cases as strong as it does now.

AMENDMENTS TO THE ACT.

By the twenty-first section of the Act the Commission is required to recommend such additional legislation relating to the regulation of commerce as it may deem necessary.

The law was undoubtedly intended to provide a comprehensive and efficient system of regulation. The power of regulation under the Constitution is broad and unqualified, and the grant of the power implies an obligation for its exercise. The Act was a legitimate exercise of this authority, and was a legislative response to an ascertained public necessity and a widely prevailing public sentiment. It could not be expected that the first legislative steps would be complete and provide for all the details of an adequate and efficient system of regulation. Any such system must grow up gradually from its original tentative form, as experience may demonstrate a necessity for additions and improvements.

The English system of regulation has been developed gradually through a period of sixty years of experimental legislation, until it reached the stage regarded as satisfactory in the general Act of 1888. The original Act to regulate commerce in this country did little more than to embody in the form of a statute the general principles which had been found by the experience of mankind to be essential in the business of transportation and which had become recognized rules of the

common law. Legislation by several of the States had also led up to the adoption and enforcement of these rules of justice in the sphere of jurisdiction of the General Government.

The prohibitions of the Act relate mostly to violations of these general principles. But experience alike of the Commission and of the carriers themselves has clearly shown that these prohibitions should be extended, and certain abuses that militate against the principles of the law and are generally injurious, but can not be adequately dealt with under existing provisions, are so antagonistic to efficient regulation that it is of vital importance they should in terms be prohibited and remedies provided for the punishment of offenders in such cases. Excessive legislation as a cure for all possible evils is not recommended, but so far as railroads are public agencies and the functions they exercise are of a public character, they are properly amenable to the regulation of the public authorities without overstepping the bounds of legitimate legislation; and whatever abuses may be connected with their public character and the public functions they exercise are matters of public and not merely private concern, and it is essential that they be placed under the condemnation of law, to give to governmental regulation the efficiency that is necessary to justify its exercise.

The Commission, therefore, in concluding its report, respectfully recommends the following amendments to the law:

First. That there be added to the third section thereof the provision recommended in the second annual report of the Commission in the following words:

The facilities to be so afforded shall include the due and reasonable receiving, forwarding, and delivering by every such common carrier, at the request of any other such common carrier, of through traffic at through rates or fares. If any one of such common carriers shall desire to form a through route for interstate traffic or any class thereof over its own line or any part thereof, in connection with the line, or any part of the line of one or more other common carriers, it shall address a request in writing to the other common carrier or carriers, describing therein the proposed route specifically, and naming proposed through rates or fares and divisions thereof for such traffic, and shall deliver such request to such other carrier or carriers, and also transmit a copy thereof to the Commission hereinafter named. If

the other common carrier or carriers shall not within ten days after receiving such request make and serve and file with the Commission written objections either to the proposed route or to the proposed rates, fares, or divisions, the same so far as not objected to shall be deemed agreed to; but if either the route, the rates, or fares, or the divisions are objected to, the objections shall be stated in writing and transmitted to the Commission, and the Commission shall then have power to determine whether, having regard to all the circumstances, the route proposed is demanded in the public interest and is a reasonable route for the traffic, and if the Commission shall so find, and the rate or divisions are not assented to, the Commission shall have the further power to prescribe the same; but the Commission in any case, in apportioning the through rate, shall take into consideration all the circumstances of the case, including any special expense incurred in respect of the construction, maintenance, or working of the route, or any part thereof, as well as any special charges which any such common carrier may have been entitled to make in respect thereof, and it shall not be lawful for the Commission in any case to compel any company to accept lower mileage rates than the mileage rates which such company may for the time being legally be charging for like traffic carried by a like mode of transit on any other line of communication between the same points, being the points of departure and arrival of the through route.

This provision is believed to be not only important in the interest of the general public, but also one that would be of high value to the roads themselves, which would not only facilitate the interchange of business, but it would tend very greatly to diminish the occasions for troublesome and expensive controversies.

Second. An amendment to the tenth section of the Act, to remove any ambiguities in its language, and make the criminal remedies clearly applicable to a corporation, when a common carrier, as well as to its officers and agents.

The need of this amendment has been disclosed by a ruling of the United States district court at Chicago, in a recent criminal case under the statute, in which it was held that an indictment could not be sustained under the language of the section against a corporation itself, but only against its officers and agents.

At least two of the paragraphs of this section require amendment for this purpose.

A further amendment is also indispensable in some part of this section, providing for the service of criminal process on

corporations and for bringing them under the jurisdiction of the courts.

Perhaps the whole section could be advantageously simplified and condensed and the defects alluded to cured by recasting it in substantially the following form:

SECTION 10. That the willful false billing, false classification, false weighing, false representation of the contents of a package, false report of weight of any property, delivered for transportation to or transported by any common carrier subject to the provisions of this Act, or any other device or means for obtaining or for furnishing transportation for property at less than the regular rates established and in force on the line of transportation of any such common carrier, are, and each of them is, hereby prohibited and declared to be unlawful.

Any common carrier subject to the provisions of this Act, whether incorporated or otherwise, and any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such common carrier, who, alone or with any other common carrier, corporation, company, person, or party, shall willfully do, or attempt to do, or cause to be done any act, matter or thing in this Act prohibited or declared to be unlawful, or who shall aid or abet therein, or shall willfully omit or fail to do any act, matter, or thing in this Act required to be done, or shall cause or willfully suffer or permit any act, matter, or thing so directed or required by this Act to be done not to be so done, or shall aid or abet any such omission or failure, or shall be guilty of any infraction of this Act, or shall aid or abet therein, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any district court of the United States within the jurisdiction whereof such offense may be committed, be subject to a fine not exceeding $5,000 for every such offense: *Provided*, That if any person shall be convicted of any willful violation of this Act, such person shall, in addition to the fine hereinbefore provided for, be liable to imprisonment in the penitentiary for a term of not exceeding two years, or both such fine and imprisonment, in the discretion of the court.

Any person who shall knowingly and willfully, by any device or means, procure or attempt to procure any common carrier subject to the provisions of this Act, whether with or without the knowledge or consent of such common carrier, or any officer or agent thereof, to transport any person or property in violation of the provisions of this Act, or to do anything by this Act prohibited, or to leave undone anything required to be done by this Act, shall be deemed guilty of fraud, which is hereby declared to be a misdemeanor, and shall upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense may be committed, be subject for such offense to a fine of not exceeding $5,000, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court.

Whenever an indictment shall be found under the provisions of this Act against a corporation, the service of any writ or other process thereupon, or

for the prosecution thereof, shall be sufficient if a copy of such writ or process be delivered to and left with any officer or agent of such corporation found in the judicial district wherein such indictment may be found. It shall be the duty of any officer or agent with whom such copy may be left, to forthwith bring it to the attention of the principal officers, or board of directors, of such corporation, and for any willful failure or neglect to do so he shall be guilty of a misdemeanor, to be punished upon conviction by a fine not exceeding $2,000, or by imprisonment not exceeding one year.

As the question may be raised whether a corporation can be proceeded against by indictment, the Commission, without discussing the point, deems it proper to refer to a number of judicial authorities upon the subject, showing that corporations are indictable, and the offenses for which they may be indicted. For this purpose the Commission avails itself of the treatise on Corporations by Mr. Morawetz, in which the authorities below cited are collated:

A corporation can not be charged criminally with a crime involving malice or the intention of the offender. (Morawetz on Corp., sec. 732.)

But there are certain classes of crimes not depending on the intention of the offender, and in these cases the crime consists of the act alone, without regard to the intention with which it was committed, and there is no difficulty in attributing an offense of this character to a corporation, since it may be committed entirely through the company's agents. (Morawetz on Corp., sec. 732.)

Therefore a corporation may be indicted for causing a nuisance.

Commonwealth *v.* New Bedford, etc., 2 Gray, 339; State *v.* Morris, etc., R. R. Co., 23 N. J. L., 360; Louisville R. R. Co. *v.* State, 3 Head, 523; Susquehanna, etc., *v.* People, 15 Wend., 267; People *v.* Albany, 11 Wend., 539; Regina *v.* North-Western R'y. Co., 9 Q. B., 315; Commonwealth *v.* R. R. Co., 4 Gray, 22.

Or for not performing a duty cast upon it by law.

Commonwealth *v.* Cent. B. Co., 12 Cush. 242; Mower *v.* Leicester, 9 Mass. 247; Louisville R. R. Co. *v.* Coon, 13 Bush. (Ky.), 388; Boston, etc., R. R. Co. *v.* State, 32 N. H., 215; Regina *v.* Mayer, 7 El. & B., 453.

Or for doing any act which is made indictable without regard to the intention of the offender.

Regina *v.* B. Nav. Co., 6 B. & S., 631; State *v.* Murfreesboro, 11 Humph., 217; United States *v.* Baltimore, etc., R. R. Co., 7 Am. L. R., N. S., 757; Brennan *v.* Tracy, 2 Mo. App., 540.

Third. It repeats the recommendation contained in the third annual report, that the twelfth section be so amended as to make clear the obligation of witnesses to attend before the Commission in obedience to subpœnas, regardless of the boundaries of judicial districts, and also that provision be made for the taking of testimony by deposition; also that the Commission be authorized to make examinations not only in person, but by agents deputed for the purpose.

Fourth. It also repeats the recommendation contained in the third annual report, that the twenty-second section be so amended as to provide that its provisions shall not prevent the free carriage of persons injured in railway accidents, and the physicians and nurses for attendance upon and care of persons so injured, nor prevent the transportation free or at reduced rates of the actual resident members of the families of employees of railways.

Fifth. It also repeats the recommendation of the third annual report, that the payment of commissions by one railroad company to ticket agents of another railroad company for passenger transportation be absolutely prohibited, and that there be the like prohibition of commissions for soliciting or procuring either freight or passenger traffic to outside organizations or persons.

Sixth. It also repeats the recommendation of the third annual report, that ticket brokerage be wholly abolished by requiring that every person who sells passenger tickets shall be duly authorized by the company for which he sells, and shall exhibit his authority, and that the company shall be held responsible for his acts. It should be a part of any law for this purpose that the carrier should be required to redeem unused tickets or unused portions of tickets.

Seventh. It also repeats the recommendation of the third annual report, that payment of car mileage for the use of cars of private companies or individuals be regulated by suitable provision.

Eighth. In view of the unavoidable delays in the compilation of statistics of railroads solely from the annual reports of the companies, and of the importance of having earlier and more frequent returns in relation to some leading features of current public interest, such as new construction and earnings and expenses for specified periods to be promptly given to the public, and to be at the service of Congress, the Commission recommends such a change in section 20 as will grant authority to call for reports from the common carriers at such times and covering such periods as may be deemed desirable for the purposes above indicated and for the proper performance of its own duties. And further, in view of the importance of having the statistics of transportation complete and comprehensive, and thereby adding to their national value, the Commission recommends that it be authorized to call for reports from companies owning connecting or terminal facilities, or rolling stock or floating equipment, used by carriers subject to the Act, and also from companies or carrying agencies doing a transportation business in connection with common carriers subject to the Act and by means of which the revenues of such common carriers are increased or diminished. These reports should conform in general to the report which the Act now requires to be made to the Commission by common carriers.

Ninth. An amendment to the 16th section of the Act, embodying substantially the provisions suggested on page 20 of this report.

All of which is respectfully submitted.

THOMAS M. COOLEY,
WM. R. MORRISON,
AUGUSTUS SCHOONMAKER,
WALTER L. BRAGG,
WHEELOCK G. VEAZEY.

THE KAUFFMAN MILLING COMPANY, COMPLAINANT, *v.* THE MISSOURI PACIFIC RAILWAY COMPANY, THE ST. LOUIS & SAN FRANCISCO RAILWAY COMPANY, THE ST. LOUIS, ARKANSAS & TEXAS RAILWAY COMPANY, THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, THE ATCHISON, TOPEKA & SANTA FE RAILROAD COMPANY, THE AUSTIN & NORTHWESTERN RAILWAY COMPANY, THE DENVER, TEXAS & FORT WORTH RAILROAD COMPANY, THE FORT WORTH & RIO GRANDE RAILWAY COMPANY, THE GULF, COLORADO & SANTA FE RAILWAY COMPANY, THE HOUSTON EAST AND WEST TEXAS RAILWAY COMPANY, THE SHREVEPORT & HOUSTON RAILWAY COMPANY, THE HOUSTON & TEXAS CENTRAL RAILWAY COMPANY, THE TEXAS CENTRAL RAILWAY COMPANY, THE INTERNATIONAL & GREAT NORTHERN RAILROAD COMPANY, THE NATCHITOCHES RAILROAD COMPANY, THE SAN ANTONIO & ARANSAS PASS RAILWAY COMPANY, THE SOUTHERN PACIFIC COMPANY, THE TEXAS & PACIFIC RAILWAY COMPANY, THE TEXAS, SABINE VALLEY & NORTHWESTERN RAILWAY COMPANY, AND THE TEXAS TRUNK RAILROAD COMPANY, DEFENDANTS.

Complaint filed March 28, 1890.—Order entered granting J. Reymershoffer and others, Executive Committee of Texas Millers, leave to intervene on behalf of defendants, April 20, 1890.—Answers filed April 19 to May 31, 1890.—Heard July 8, 1890.—Briefs and arguments filed July 5 to November 18, 1890.—Decided November 30, 1890.

1. For reasons peculiar to the territory lying west of the Mississippi River, comprising a large portion of Texas, the State of Missouri, and a considerable part of Kansas, the rates on wheat and wheat

flour are grouped without reference to distance, and a lower rate has been charged on wheat than on wheat flour for fifteen years or more. Prior to 1886 the difference in the two rates was fifteen cents a hundred pounds or greater. In 1886 a readjustment of rates was made, and upon consideration of all the circumstances and conditions and claims of rival localities the differential was reduced to five cents a hundred pounds, which has since been maintained. Upon complaint made by millers of Missouri, supported also by millers of Kansas, against a differential of five cents a hundred pounds, and claiming an equal rate on wheat and flour carried from Missouri and Kansas into Texas,—*Held*, that under the conditions existing in the territory in question a rate of five cents less a hundred pounds on wheat than on flour does not as matter of fact work unjust discrimination, and is not therefore unlawful.

2. It appearing that the carriers have at times reduced the rate on wheat without a contemporaneous reduction on flour, and so made a larger differential than five cents a hundred pounds, which is sometimes maintained for a considerable period, it is found that a differential exceeding five cents a hundred pounds works unjust discrimination, and is unlawful.

3. Reserving any questions that may arise in case a uniform classification shall be established, at present an exception to a general rule of classification or rate-making may be justified by adequate considerations in view of dissimilar conditions in different portions of the country, and when a rigid application of a general rule will be injurious to important public interests an exception is only reasonable.

4. The power to regulate commerce among the States is absolute in Congress and rates on such commerce may be regulated by federal authority with reference to trade conditions and circumstances of localities without infringing the rights or immunities of such commerce under the constitution.

5. The decision in this case applies only to the present situation in the territory in question, and is not intended to lay down a permanent rule for the future nor to apply elsewhere.

Judson & Reyburn, for complainant.

John S. Blair, for Mo. Pac. Ry. Co., D., T. & F. W. R. R. Co., and I. & G. N. R. R. Co.

E. D. Kenna, for St. L. & S. F. Ry. Co.

J. Chandler, for St. L., A. & T. Ry. Co.

Britton & Gray, for A., T. & S. F. R. R. Co., and G., C. & S. F. Ry Co.

J. W. Terry, for G., C. & S. F. Ry. Co.

Houston Bros., for S. A. & A. P. Ry. Co.

Leovy & Blair, for S. Pac. Co., H. & T. C. Ry. Co., and T. C. Ry. Co.

Fitzhugh & Wozencraft, for T. T. R. R. Co.

R. S. Wheeler, for Ex. Com. of Texas Millers.

REPORT AND OPINION OF THE COMMISSION.

SCHOONMAKER, *Commissioner:*

The petition in this case avers that the complainant, a corporation organized under the laws of Missouri, engaged in the manufacture of flour in the city of St. Louis, is unjustly discriminated against and subjected to undue and unreasonable prejudice and disadvantage by reason of the rates charged by the respondents on wheat and flour respectively, from St. Louis, Mo., and other points in Missouri and Kansas, to points in Texas, which are five cents per hundred pounds (and sometimes more) greater on flour than on wheat; that this differential does not apply on like transportation in any other direction, that it is not warranted by any difference in cost of service and that any difference in rates operates as an unjust and illegal discrimination against complainant and all other millers situated in the same territory.

The respondents answered separately, and without setting forth the answers in full it is sufficient for the purposes of the case to state generally their substance. They admit that the rates charged upon the transportation in question are in fact five cents per hundred pounds greater upon flour than upon wheat, and that no difference is made upon like transportation in any other direction, but they aver that the rates are reasonable and just, and deny that the differential established by such rates operates as an unjust discrimination against the complainant, or that it subjects complainant or other millers to any undue or unreasonable prejudice and disadvantage in contravention of the Act to regulate commerce.

The Texas, Sabine Valley & Northwestern Railway Company, the Shreveport & Houston Railway Company, the Houston East & West Texas Railway Company, and the Southern Pacific Company, however, deny that any wheat is

transported by them, and claim therefore to be guiltless of any discrimination; the Austin & Northwestern Railroad Company state that it receives as its proportion of the through rate the same upon wheat as upon flour, and the Denver, Texas & Fort Worth Railroad Company denies that it transports merchandise of any kind between the points named. The Natchitoches Railroad Company alleges that its railroad is entirely within the State of Louisiana, and that it is not subject to the jurisdiction of the Commission. The Missouri Pacific Railway Company claims to be controlled in the matter by its southern connections, and the Missouri, Kansas & Texas Railway Company makes no formal answer, but is content to rest its case upon the arguments of the milling interests of the respective sections.

The answers of the other defendants are substantially similar. They aver that the differential complained of is in accordance with established custom throughout the country, the differential in local Texas rates being from fifteen to forty per cent., and seek to justify it upon the following grounds:

That flour is a manfactured article, and is of much greater value than wheat; and that the risk, insurance and responsibility of the carrier are therefore greater.

That the cost of service is greater in the transportation of flour than in the transportation of wheat, in the following respect: The risk is greater, by reason of the increased value, as already set forth; and flour is more liable to damage in transportation, involving more numerous claims for loss and damage, and greater expense in the payment thereof. When flour is transported in barrels the total weight is not charged for, the barrel package being carried free, while wheat is carried at actual weight. Flour is shipped where often no return freight can be had, and where it must be unloaded at the expense of the carrier, and frequently after serious delay, while wheat is expeditiously unloaded by the consignee, without expense to the carrier, and the cars promptly returned to service, sometimes loaded with flour for a second haul. This second haul in locally distributing the flour is of benefit to the carrier, and an important factor in rate-making. More revenue is derived from the transporta-

tion of wheat, not only by transporting at least forty per cent. more raw material than would otherwise be carried of flour, but because more wheat can be carried in a car; and the transportation of wheat also creates for the carrier other valuable traffic, such as fuel and mill supplies, and by reason of this increase of other traffic, resulting from the transportation of wheat, the carriers can afford a lower rate for that article.

That the differential is necessary to protect the large and growing milling industry of Texas, which would be destroyed if it were abolished, and to provide Texas wheat growers with a market for their crops; and that it also benefits the wheat producers of Kansas by enlarging their market and producing competition for their products.

That the Texas miller must pay freight upon a large proportion of worthless material, such as bran, etc., and is also at greater expense in milling, by reason of increased cost of fuel, labor and mill supplies.

That complainant can still compete on more than equal terms with the Texas millers, the rate on flour from St. Louis to competitive Texas points being less than the combined rate on wheat to milling points in Texas and the rate thence on flour to competitive points.

And the defendants set forth that milling is an important industry in the State of Texas, in which a large amount of capital has been invested; that it has also proved beneficial to the agricultural development of said State by stimulating the production of wheat therein, but that such production is still greatly exceeded by the consumption of flour in said State, and is also insufficient to supply the demands of the mills therein; that the Texas mills are therefore required to purchase large quantities of grain in Kansas, Missouri, and other Northwestern States, and pay transportation charges thereon from said States, and after the same is manufactured and the flour is reshipped to dealers and consumers throughout Texas on local rates.

That until recently larger differentials than five cents were maintained, but that the sales made by the Kansas and Missouri millers during the existence of such larger differentials

would indicate that the burden was not oppressive; and that it is only since the capacity of the Texas mills has been increased, and the millers of Kansas and Missouri have begun to feel their competition, that complaint of the rates has been made. That after consultation with the millers of both sections, and after full and mature consideration, the carriers reduced the differential some five or six years ago to the present basis, although many of the defendants believed that it should be much greater; and that such reduction has seriously hurt the milling industry of Texas, and retarded its progress. Further, that Kansas and Missouri millers purchase a large part of their supplies direct from farmers, while Texas millers must pay commissions and elevator charges; and that the millers of Texas labor under additional disadvantages in the sale of their offal and low-grade flour, on all of which a rate of 46 cents must be paid while in the form of wheat.

And in view of these facts the respondents claim that the present differential, instead of being an unjust discrimination against the complainant, is insufficient to protect the Texas miller in his legitimate business, and consequently is an unjust discrimination against him, and that a much larger differential is justified by the difference in cost of service, value of products and risk.

On the 14th of April, 1890, soon after the filing of the complaint, application was made by the millers of the State of Texas, through a committee duly appointed by them, to intervene as co-defendants in the case, and an order was made by the Commission that the members of said committee be permitted to participate in the hearing of the cause, and have leave to introduce such evidence or submit such argument as might be deemed of importance in their behalf. The committee was accordingly represented by counsel upon the hearing, and opportunity afforded for the presentation of their views.

The material facts are as follows:

The rates charged upon the transportation in question, and the differential which they establish, are not in dispute. They

are 51 cents per hundred pounds upon flour and 46 cents upon wheat, the differential being five cents per hundred pounds. It appears, however, that for several years an annual reduction in the rate upon wheat has been made, immediately following the harvest, and lasting for several months, and that it has sometimes been as low as 35 or 30 cents per hundred pounds; that at such times the rate upon flour has not been simultaneously reduced to correspond with the reduced rate upon wheat, but that there has been an interval, sometimes of several weeks, when the differential was often as much as 15 or 20 cents; and that during this time the millers of Texas have been active purchasers of wheat in Kansas and Missouri, and have been able, by reason of this reduced rate and excessive differential, to entirely control the Texas market while grinding the supply of wheat obtained under the cut rate, and that the bulk of their wheat has been procured under these favorable conditions. It was admitted by an officer of one of the respondents, who testified in their behalf, that there was no physical obstacle to prevent a simultaneous reduction in both the wheat and flour rates so as to preserve at all times the usual differential, but that the course described was followed by the carriers in order to benefit the Texas millers, or, as was claimed, to place them upon an equality with the millers of Kansas and Missouri. No differential upon like transportation exists in the direction of New England or the North Atlantic seaboard, but a differential of four to six cents exists on transportation to the southeast, to what is known as Green Line points, being the competitive points in the territory of the Southern Railway & Steamship Association, east of the Mississippi River and south of the Ohio and Potomac Rivers, but not including points on the Mississippi River.

It was further shown by the evidence that the millers of Kansas and Missouri have sold their flour in the markets of Texas for many years, although much larger differentials than that at present in force have until recently existed, and that they can still ship their flour there, though not as largely as formerly, in competition with the flour of the Texas millers, when the usual rates are maintained and the differential

is no greater than five cents. In fact, it was admitted by one of complainant's witnesses, that a differential of only five cents, aside from other things, ought not to keep St. Louis flour out of the Texas markets, and that it is the cut rates upon wheat and the occasional greater differential that are the real subjects of complaint. And also that, so far as the St. Louis flour is concerned, it has not much chance in Texas, on account of the competition of mills in Kansas, which are nearer to the source of supply.

The milling business in Texas, according to the evidence, began about ten years ago, and there are now about sixty mills in operation, with an investment in plant of about three million dollars, and an output of six thousand barrels a day. The existence of mills in Texas has reduced the price of flour to Texas consumers, and has also had a stimulating effect upon the agricultural development of the State; the production of wheat having for some years steadily increased, but being yet insufficient to supply the consumption of flour within the State, or even to meet the demands of the mills for raw material. A large proportion of the breadstuffs consumed in the State must therefore be supplied from other States, and nearly half of the deficiency is shipped into Texas in the form of flour, of which about half a million barrels are brought in annually. The balance is supplied in the shape of wheat, which the Texas millers purchase in Kansas and Missouri when the home supply is exhausted, thereby benefiting the producers in those States by enlarging their markets and creating greater competition for their products. There was evidence tending to show that the effect of this competition has been to increase the price of wheat in Kansas as much as five cents a bushel.

In the State of Missouri (exclusive of St. Louis) there are about five hundred mills, with milling capacity of 25,000 barrels daily, and in St. Louis and territory immediately adjoining the mills aggregate a capacity of 18,000 barrels daily. In Kansas there are about three hundred and fifty mills, with a capacity of 17,500 barrels daily. The great competition of mills has materially reduced the profits of milling in these States, but recent introduction of improved machinery, in

the form of the roller process instead of the burr stone, has increased the economy of production. Flour is made more cheaply and of better quality, and more flour is produced from the grain. Patent flour, which at first was only ten per cent., is now thirty to forty per cent. of the product.

A differential upon this traffic has existed for about fifteen years, and at the time mills were first established in Texas it was regularly maintained at about 15 or 20 cents, under which the millers of Kansas and Missouri were able at that time to compete, and of which no complaint was made. It was not until the milling industry of Texas had attained considerable growth, and the force of its competition was felt by the millers of other States, and the margin of profit in milling had materially declined, that objection was made to the differential then existing, and an effort made to have it abolished. This the carriers refused to do, but in June, 1886, after considerable contention between the rival interests, the differential was fixed at five cents per hundred pounds, as it now remains, although the Texas millers claim, and the evidence shows, that some of them have operated their mills at a loss since this reduction in the differential, and have insisted that it be restored to at least 15 cents, to enable them to compete successfully. The millers who appeared as witnesses testified that the reduction to five cents had retarded the production of wheat in Texas and diminished the revenues of the carriers, and had injured the milling industry. They also claimed that they would not attempt to do business if the present differential should be abolished.

Some of the wheat ground by the St. Louis mills is procured from Illinois, at a local rate of 10 to 12 cents, but the majority of it comes from the same territory in which the Texas millers purchase their supplies, and costs from 15 to 18 cents per hundred pounds for freight to the mill. An elevator charge of one cent a bushel is also paid. The millers of Kansas pay on an average 10 to 15 cents on wheat to their mills, but they may take advantage of a milling-in-transit rate of 53 cents to Texas points.

The flour of the Texas millers is distributed to Texas competitive points at a local rate of 23 cents per hundred pounds,

and to other points at about 20 cents, making the total cost of delivery at competitive points 69 cents, as against substantially the same amount paid by the Kansas or St. Louis miller at an average local rate of 15 cents on the wheat to his mill, and elevator charge of about two cents per hundred pounds, and the rate of 51 cents on the flour to competitive points; but when the Kansas miller uses the milling-in-transit rate the total cost is only 53 cents.

The price of mill offal is higher in St. Louis than in Texas, being at the former place 50 or 60 cents per hundred pounds, while the Texas miller barely receives enough to pay the cost of transportation. The price of flour is less in St. Louis than in Texas by about the expense for transportation.

The production of wheat in Texas in 1870 was 1,225,000 bushels, and the acreage tilled 104,700. Both amount of production and acreage tilled have steadily increased since, though the crops have varied considerably in some years. In 1880 the production was 3,008,112 bushels, and the acreage 376,014. In 1889 the production was 6,189,000 bushels, and the acreage 600,837.

The Agricultural Department in September last reported the wheat crop of Texas for 1890 at forty-nine per cent. of the crop of 1889, of Missouri at eighty per cent., and of Kansas at eighty-five per cent.

At an average of a barrel of flour for each inhabitant the people of Texas require for consumption 2,314,812 barrels. Allowing one million bushels of wheat for seed, in the crop of 1889 there remained 5,189,000 bushels, or 1,037,800 barrels of flour, for consumption, which was less than the quantity required by 1,277,012 barrels, or about 6,385,060 bushels. This deficiency was supplied in about equal quantities of wheat and flour from Missouri and Kansas.

A barrel of flour requires 280 pounds of reasonably well-cleaned wheat, upon which freight is paid by the Texas miller at 46 cents per hundred pounds when brought from without the State. This number of pounds of wheat produces 196 pounds of flour, about 79 pounds of mill offal, such as bran and screenings, and there are five pounds of invisible loss.

In the transportation of wheat from Kansas and Missouri to Texas the cars carry from 30,000 to 36,000 pounds, averaging perhaps about 33,000 pounds. In the carriage of flour from the same States the carload quantity is 20,000 pounds. One hundred barrels of flour, which constitute a carload quantity, contain 19,600 pounds of flour, and the barrels weigh 1,900 pounds, making a total of 21,500 pounds. The freight rate on flour is charged at 20,000 pounds, which include only 400 pounds of the weight of the barrels, leaving 1,500 pounds of barrel weight carried free. The average weight of the cars is 23,000 pounds. The free carriage of 1,500 pounds of barrel weight, when flour is carried in barrels instead of sacks, makes the 51-cent flour rate practically 47½ cents per hundred pounds for the flour and its packages transported.

The revenue from a car carrying 20,000 pounds of flour upon which freight is charged at 51 cents per hundred pounds is $102. The revenue from a car carrying 33,000 pounds of wheat at 46 cents per hundred pounds is $151.80. The dead weight of the car hauled in both instances is the same. Taking the total of dead weight and paying freight in both instances, the revenue for the carrier per hundred pounds for a carload of wheat (56,000 pounds) is 27.1 cents, and the revenue per hundred pounds from a carload of flour in barrels (44,500 pounds) is 22.9 cents.

The conclusions in this case, which will be stated as briefly as possible, are intended to apply only to the situation presented by the record, as the case is not one in which a rule of general application can or ought to be laid down.

The case is altogether peculiar. Originally brought by millers of St. Louis against certain carriers engaged in transporting wheat and wheat flour into Texas, it in fact represents the milling interests of Missouri and Kansas, and, by the intervention of the millers of Texas, has broadened into a controversy between the first-named millers on the one hand and the last-named millers on the other hand. The carriers that are the nominal respondents upon the record, in the main, support the contention of the Texas millers.

The essential fact upon which the controversy turns is

undisputed. This is that the carriers make a differential of five cents a hundred pounds in the charge for the transportation of wheat and wheat flour into Texas, the rate on wheat being 46 cents a hundred pounds, and on flour 51 cents a hundred pounds. These rates are grouped for the whole wheat and flour producing territory in Missouri and Kansas and for all the competitive points in Texas to which those articles are carried, without regard to differences in distance. Neither the amount of the rates nor the grouping method employed is called in question, and the differential alone is challenged. Only the relative reasonableness of these rates is therefore to be considered.

The carriers and the Texas millers substantially agree in presenting the reasons relied on as a justification for this differential. These reasons relate in part to the interests of the wheat growers and millers of Texas, and in part to the interests of the carriers. The principal reasons assigned are in substance as follows:

The difference in the value of the wheat and the flour manufactured from the grain. It is claimed that because flour is a manufactured article, and of greater market value, it can legitimately bear a higher transportation rate, and that this principle is generally applied.

The difference in the quantity constituting a carload, by reason of which the carrier receives a considerably larger revenue from an average carload of wheat at the reduced rate of 46 cents than from an average carload of flour at the rate of 51 cents per hundred pounds, and that the relation of revenue to service for the use of the same kind of car warrants the difference in rate on the two commodities.

The increased business that accrues to the Texas carriers as a result of and incidental to the carriage of wheat from without the State to Texas mills, in the subsequent haul of flour from the mills to Texas points, and also in hauling to the mills necessary supplies for carrying on their operations, such as mill machinery, fuel, cooperage, sacks and other things.

The importance of maintaining the Texas mills in order to

afford a market for the increasing quantity of wheat grown in Texas, which could not be marketed to advantage if it had to be shipped out of the State. The milling business in Texas is claimed to be an essential concomitant of wheat production, a pursuit in which many of the inhabitants are engaged and of growing importance. Without these mills to furnish a local market wheat production would, except in cases of failures of crops elsewhere, be unremunerative. It is said, and the evidence tends to support the statement, that without the differentials the Texas mills would not be able to compete with the more northern mills.

The Texas millers insist that a larger differential than five cents per hundred pounds is necessary to maintain their competition successfully with the northern mills, and that the difference should be not less than fifteen cents to afford them a reasonable margin of profit. The carriers say, in substance, that the differential of five cents per hundred pounds is a compromise between the rival claims of the Texas millers and wheat growers on the one hand and the millers in Missouri and Kansas on the other hand, and that it has been established after hearing the claims of both sides, and careful consideration of the subject with the view of an equitable arrangement that would not be unjust or unduly prejudicial to the interests of any of the parties.

There is no doubt that under the general rule of classification in most parts of the country wheat and wheat flour are classified alike and carried at the same rate. This is especially the case upon shipments of those articles from the West to the Atlantic seaboard and intermediate points; but, as is shown in the statement of facts, the rule is not universal, and, besides the extensive area in question, comprising most of three large States, a difference of from four to six cents per hundred pounds is made upon shipments into the very considerable territory of the Southern Railway & Steamship Association, and a greater difference—20 to 40 cents—is made upon the local shipments within the State of Texas.

Whatever the reasons may be for these differences, and without reference to the adequacy or inadequacy of the reasons, the differences in fact exist as exceptions to the general

rule of classification, and are not of recent creation, but have existed and business has been done under them for at least fifteen years. Until about four years ago the difference was 15 cents a hundred pounds. The change made has therefore been favorable and not prejudicial to the northern mills. That it might be better in the main to have one uniform rule is conceded, and this may become necessary in case the new uniform classification shall be applied, but that there may be some justifiable exceptions to a general rule cannot be denied, and in view of the diversified conditions of the country it can scarcely be assumed that it cannot be shown by evidence that an exception in some one or more localities is reasonable and that it will not necessarily work unjust discrimination. When a rigid application of a general rule will work injuriously to important public interests, an exception that will mitigate the evil and result in no practical injustice is reasonable.

The only question that the Commission deems it important to consider in this case is whether the differential in question works unjust discrimination against the complaining millers. This, under the statute, is purely a question of fact. A statute may define what shall be deemed unjust discrimination, and when that is done the particular act so defined must be held to be unjust discrimination as matter of law. The Denaby Main Colliery Company Case, 3 Ry. & Can. Traf. Cases, 441. But in a case like this it is altogether a question of fact.

Assuming that as a general rule wheat and wheat flour should have the same classification and rate, the differential in question is undoubtedly a discrimination, but it does not follow that the discrimination is unjust under the particular circumstances and conditions. As was said in the Report of the Senate Committee of 1886, page 183: "In the practical management of a railroad, whether by the strongest government or by a corporation, it is found impossible to avoid the exercise of discrimination, and, in consequence, the courts have always recognized the distinction between justifiable and unjust discrimination. Whether the discrimination practiced in any given instance was allowable or unwarranted is a

question that can be fairly determined only by understanding the trade conditions and special circumstances that influence and govern the action of the railroad managers in that particular transaction. These are of almost infinite variety and frequently beyond the observation of those without practical experience in railroad management."

The discrimination in this case is professedly founded upon the trade conditions and special circumstances that exist in the localities where the discrimination applies. The rival and competing mills that are parties, nominally or practically, to the controversy, in fact exist, and have a right to exist and carry on business if that can be done without undue prejudice to the rights of others. The wheat-growing industry of Texas is also an existing fact, constituting a large occupation of the inhabitants, increasing in quantity and in acreage in considerable volume, and it is in the public interest that this industry should have fair opportunity for development and remunerative existence. The carriers, recognizing the facts of the situation, applied the method, neither uncommon nor necessarily unlawful, of a differential adapted to the circumstances, and for a long time have maintained a higher though gradually decreasing rate on flour brought into the State from other portions of the country than on the grain. This, it is said, has served as a factor in developing the milling business, which in turn created a local market for Texas wheat. In support of this adjustment it is said that an equal rate gives undue advantages to millers without the State near the wheat supply, and that the differential tends only to equalize more nearly the trade conditions, and involves no unjust discrimination. If the effect were to enhance materially the price of flour to consumers in Texas, objections on public grounds might be made. But no complaint has come from consumers, and the evidence shows that the price of flour has decreased in Texas as it has elsewhere. Nor is there any claim that the growers of wheat in Kansas and Missouri are injured. The sales of their wheat in Texas necessarily benefit them. The contention is between the millers of the respective territories, and it is quite evident that the Missouri millers are affected fully as much, if not

more, by the competition of Kansas millers, as by the conditions in Texas.

As an incident of the case, but without affecting its disposition, it may be said that from the carriers' standpoint solely there is reason to believe that the differential is advantageous to their interests. They earn more revenue on a carload of wheat than on a carload of flour carried into Texas. Their business is to some extent increased by the second haul of flour from the Texas mills, and by the carriage of necessary supplies to those mills.

On the other hand, it is to be observed, the complaint is not against a newly created state of affairs, changing for the worse the conditions under which business has been carried on, but the conditions have in fact existed for many years without complaint, although the differential until about four years ago was three times the present amount. The complaint is therefore against a long-standing condition existing now only in a greatly modified form, and which does not have the effect to exclude the northern mills from the Texas markets. The testimony fully shows that the northern mills under the differential, are able to compete with the Texas mills on terms that are not unduly advantageous to the Texas millers, and that, of the large amount of flour needed for consumption in Texas beyond that produced from Texas wheat, at least one-half is carried into Texas in the form of flour.

The Texas miller pays 128 8-10 cents freight on 280 pounds of wheat to produce a barrel of flour of 196 pounds, and 79 pounds of bran and screenings, and there are five pounds of waste. The northern miller pays 102 cents freight on 200 pounds for a barrel of flour. This leaves, at the rates charged, a difference of 26 8-10 cents a barrel in favor of the northern miller between the transportation charge on the quantity of grain necessary for a barrel of flour and on the flour itself. Bran and screenings have a market value in Texas only about equal to the cost of their transportation. At St. Louis they can be profitably marketed. The local Texas rate on flour from the mills to competitive points in that State, of 23 cents a hundred pounds, and the local rates

on wheat to the mills in Missouri and Kansas, which range from 10 to 20 cents a hundred pounds, are factors in the general situation, and upon a fair balance of all the elements involved an approximately equitable result seems to have been reached in the difference between the rates in question.

Considered as a question of fact, therefore, the adjustment of this differential does not appear upon the evidence before the Commission to have resulted in unjust discrimination against the complainant or the millers similarly situated to themselves. The general effect of the differential seems only to be to place the competitive milling interests upon a substantial parity. Both undoubtedly make less profits and have less business than if the competitors of either did not exist, but the question is not whether either of the parties shall have a monopoly of the business and therefore higher profits, but whether, as both legitimately exist and have lawful right to pursue the business in which they are engaged, they shall be put upon a substantial footing of equality by an arrangement that allows some profit to both and enables them to compete on relatively equal terms.

Upon this aspect of the case the Commission is not able to discover, upon the showing made, that, as matter of fact, unjust discrimination results from the differential of five cents per hundred pounds, and it cannot, therefore, be pronounced unlawful.

The larger question raised by complainant's counsel in his able and forcible brief, that a higher rate on wheat flour than on wheat is an unlawful interference with the freedom of interstate commerce, is not understood to exist in this case. Such a question might arise if a State attempted to impose a burden on an article of commerce coming into it from another State. It is not seen how it can arise in respect to the exercise of the national authority. Interstate commerce is under federal jurisdiction, and the rates on interstate traffic may be regulated by federal authority with reference to trade conditions and the circumstances of localities without infringing any of its rights or immunities under the Constitution. The absolute power of regulation is in Congress, and the only freedom of commerce is the freedom from other

burdens or regulations than those imposed by Congress or pursuant to its authority. A common carrier cannot be required to move interstate traffic without the payment of reasonable charges for its service, and can exact only a reasonable charge from the traffic. The reasonableness of the charge may depend on a variety of considerations, and the relations of one article to another, or of one locality to another, may be among these considerations.

The relative reasonableness of rates is therefore part of the domain of federal regulation. If it is reasonable in view of the carrier's service and earnings, or for public considerations, that grain and its products should have the same rate, or should bear different rates, it is the province of regulation to determine the question. It may be reasonable that the same article shall be carried at one rate in one part of the country, or on one road, and at a different rate in another part of the country or on another road. But different articles, though analogous in some respects, are not necessarily to be carried at the same rate. Wheat and flour are not the same commercial articles. The process of manufacturing converts the grain into an article for household use, and a new value is given to it. This new article can not be said to be of right entitled to the same rate as the natural berry from which it has been made. For carriers' reasons, which in most cases are reasons of expediency, they have been classified alike in most parts of the country, but whether this has been done by the rail carriers by reason of the competition of water carriers, or to develop the milling of flour in or near the centers of wheat production, or on account of foreign markets, or because they believe it to be right, does not appear, and is not material to this controversy. The right to an equal rate on flour and wheat must first be shown before a higher rate on flour can be declared unlawful. This question of right is the question in dispute in the case. Without discussing the abstract question, it is sufficient for the purposes of this case that on the facts disclosed no actual injustice has been found in the existence of a rate five cents a hundred pounds higher on flour than on wheat in the territory in question.

The evidence discloses another feature in the case, however, that requires separate consideration. It appears that in every year the carriers have made very considerable reductions in the rate on wheat without making simultaneous reductions in the rate on flour, and that in such instances the differential would sometimes be 15 cents per hundred pounds, or even more. This does not appear to have been accidental, but to have been intended by the carriers, and the great disparities in the rates have been allowed to exist at times for a number of days and at other times for a month or more. The effect of the failure to make the reduction simultaneous was undoubtedly seriously prejudicial to the northern millers, and practically excluded them from the Texas market. No circumstances in justification, or even in extenuation, of this practice have been shown, and the Commission finds that this practice works unjust discrimination against the complainants and others situated as they are, and is unlawful. It also finds that under present conditions a discrimination exceeding five cents a hundred pounds is unjust.

The general conclusion upon the whole case is that the complaint is not sustained as to a differential of five cents per hundred pounds, but it is sustained as to a differential exceeding that amount; and that the respondent carriers should cease and desist altogether from charging or receiving a greater differential upon the carriage of wheat and flour from Missouri and Kansas points to Texas points than five cents a hundred pounds.

The conclusions reached in this case apply only to the situation existing at the present time in the territory in question, and are not intended to lay down any permanent rule for the future, or to be applied in any other territory.

The case is disposed of with a view to what is best for the public interests immediately concerned, and upon facts found to exist rather than upon theories of transportation. No question of general policy is involved. An exceptional condition only is presented with relative rates adapted to the condition, and a sudden change in the relations of these rates could scarcely fail to be injurious to important vested interests. The statute contemplates and clearly provides for dis-

similar conditions that may affect the making of rates by carriers, and in a proper case of that nature it is no less the duty of public tribunals to recognize dissimilarities that justify exceptional rates than to apply the general principles of the law.

MORRISON, *Commissioner*, dissenting:

The roads named as defendants in this proceeding charge five cents more per hundred pounds on flour than on wheat, carried from St. Louis, and other places in Missouri and Kansas, to Galveston and other places in Texas.

The complaint is that this greater charge on flour unjustly discriminates against Missouri and Kansas millers and deprives them of the advantages resulting from the better location of their mills.

These roads carry wheat and flour north and east, and when carrying for northern and eastern mills or markets, the rate over these and all other roads is the same on flour and wheat. The evidence offered in justification of a higher rate on flour to Galveston or Houston, would apply as well in justification of a higher rate to Boston or Albany. It is not contended that any reasons exist for this difference of five cents in the charges to Texas points that may not with equal justice be urged in support of a higher rate on flour carried into any State producing less wheat than it grinds.

The claim is made that flour is more valuable, and its carriage attended with more risk and expense, than wheat, and for these with other reasons, no more applicable to Texas than to any other State, it is insisted flour can bear, and may rightly be charged, a higher rate. But the conclusion of the Commission, that the greater charge on flour is lawful, is not based on these considerations.

The decision is made in consideration of the advantages resulting to Missouri and Kansas mills, from their location in or near the wheat-producing region from which Texas mills also draw a large part of their wheat supply, at a cost much increased by the higher transportation charges which it must pay. In declaring this higher rate on flour lawful, the Commission assumes to put the millers of Texas on a

"parity" with their competitors in the Texas markets, by depriving Missouri and Kansas millers of whatever advantages they have in their favorable location.

In a recent case the Commission said substantially, and I think correctly, that while the law forbids discriminations that are unjust, it does not justify deviation from a just and reasonable rate to equalize advantages of geographical location as between western and eastern millers. In my opinion such a deviation would be equally unjustifiable to equalize advantages of geographical location as between western and southwestern millers.

The milling capacity of many of the States and of the United States is excessive. Texas, like many other States, has mills to grind more wheat than it produces. Its people produce, or did last year, half the wheat they used, and this with half as much more they made into flour. They get some flour from mills east of the Mississippi river, and make double as much in their own mills from their own wheat as they get from Kansas and Missouri. The advantages resulting from the location of mills near wheat supplies is thus shown to be with Texas millers in the manufacture of one-half and with Missouri and Kansas millers of but one-fourth of the flour sold in Texas. If, therefore, the advantages or disadvantages resulting from the greater or less prudence with which citizens of respective States locate their business establishments are to be equalized by the roads in the adjustment of rates, and this by authority of a regulating Commission, then lower rates should be given to the Kansas and Missouri millers to compensate them for the advantages their competitors have in the use of Texas wheat in producing flour for the Texas market.

The right to have disadvantages resulting from the location of mills and business establishments removed or equalized by the imposition of transportation charges, if conceded at all, can not end with such as are local to any one State, but belongs as well to all the States, and is as applicable to other industries as to milling. If flour milling in Texas must be protected by an increased rate of five cents on flour brought from other States, milling east of Ohio must have like pro-

tection, though it will increase the cost of the bread of millions there as it does in Texas.

When this rule of regulation is applied, as it must be, to other industries than milling, the makers of sugar in Texas and Louisiana, advantageously located for economic production, will be required to pay such high rates on sugar as will enable the Kansas grower of sorghum to compete on equally profitable terms, in the sale of sugar, in the Kansas market. In such endeavor to protect disadvantageously-located industries through increased rates and charges, the Commission will scarcely have occasion to use its powers of regulation, for whatever this Commission may authorize the roads to do, they may lawfully do without its authority.

A scheme of regulation, with the object of equalizing advantages of location, is practically without limit, if not impossible of execution. In the case under consideration, it is proven that the millers of Missouri and Kansas, with the same rates on flour, do not compete in the Texas flour market on equal terms, for the reason that Kansas mills are more advantageously located, in having wheat so near at hand that their cost of transportation is small, in comparison with that paid by Missouri millers. The ruling of the Commission will require that the "trade conditions" in this and every such case shall be equalized by a higher rate on Kansas than on Missouri flour.

While the decision of the Commission is that, with the different conditions attending the production of flour in the States named, a discrimination of five cents is not unjust discrimination, it is said that flour is the more expensive freight, that its carriage is attended with greater risk, and that, therefore, the higher rate on it is warranted. Upon the question of the relative risk and expense of carrying wheat and flour there is conflicting testimony, and the findings of fact as stated are misleading.

A general freight agent of one of the defendant roads, while testifying as a witness, said:

"My observation has been that there is no appreciable difference in the cost of handling the two commodities. In

handling shipments of flour they are loaded by the shipper and unloaded by the consignee, and, as a general rule, very promptly; shipments of wheat are sometimes held at elevators and our cars are used for warehouses; the flour is handled much more promptly than the wheat as a rule, not only in our territory, but in all other territory." And again: "My observation is that it is just as cheap to handle flour as it is wheat."

The reliability of the observations and statements of this witness is confirmed by all the roads, including the defendants, in their long-continued unbroken practice of carrying wheat and flour at one rate to the eastern seaboard and intermediate points.

Both in the findings and conclusions, the Commission assumes that the five cents higher rate in question is made on flour in barrels, when the fact is, as the proof shows, that, of the flour carried to Texas, from seventy to ninety per cent. goes in sacks. That it can be, and is, so carried as cheaply as wheat, is not denied by any witness, or contradicted by any testimony offered.

The conclusion that the five cents differential in favor of Texas flour does no more than put the competing milling interests in the Texas market in the relation of substantial equality, and does not shut out or work unjust discrimination against St. Louis flour, is chiefly based on the testimony of one of complainant's witnesses, which does not, as I believe, warrant such conclusion. The witness said:

"I am not prepared to say that five cents would amount to keeping us out of the territory aside from anything else. We have not much chance in the Texas territory, except in a limited portion, by reason of competition with Kansas millers. Their interests are antagonistic to ours. But the principle that the railroad may make any rate of difference upon flour as compared with wheat is one which we appeal to the Commission to abolish and forbid. It is doubtful whether the five cents would keep us out if other conditions were equal. We cannot get in there in fair competition with Texas

millers, but we sell our flour in competition everywhere where it is easy to figure that we could not get in at all—even where mills have lower rates of freights and cheaper wheat —Milwaukee, St. Paul and Minneapolis. The actual differential is not so great, but it is the principle of the thing and the occasional greater differential that hurts us. I think on careful figuring that five cents should keep us out of Texas. It should give the miller down there an opportunity to mill and sell at his own mill cheaper than we can lay the flour down. It is a question whether he could or not, but I think he should. I do not think he could pay any great amount of freight to local points even with that differential."

Correctly interpreted, this testimony implies that the five cents higher rate on St. Louis flour ought to keep it out of Texas markets, and would, if the same efficiency and economy of production was practiced in Texas as in St. Louis. Efficiency and economy are factors or elements in production often as advantageous as location, and a higher rate may with equal justice be asked for, to equalize advantages resulting from one as from the other.

The fact that flour was shipped to Texas five or ten years ago when the differential was more than five cents does not show that it can be successfully done now. The millers' profit has fallen off more than the differential.

The advantages from location in the midst of, or near, wheat regions are such as to invite the establishment and secure the maintenance of ample local milling facilities, at least to the extent of local wheat production, without the advantage of differential or protective rates. In the ten or more years last past, the price of flour in Texas has declined as it has elsewhere, not because of the existence of mills in Texas, but for reasons operating throughout the country. The price of flour in Texas exceeds the St. Louis price to the amount of the transportation charges, but in the conclusions arrived at by the Commission it is assumed, in the absence of complaint by consumers, that the differential or five cents higher charge on flour does not enhance the price to them. Such an assumption is without warrant. To make complaint

and prosecute it would involve a cost so out of all proportion to the cost of the higher rate to any individual consumer as to secure his silence, except as he has complained with the public in the Act to regulate commerce.

It appears in this proceeding that at the time of its commencement the rates were, on the hundred pounds of wheat, forty-six cents, and on flour fifty-one cents, from St. Louis to San Antonio, Texas, 1,031 miles; from Seligman, Missouri, to Arthur, Texas, 256 miles; from Atchison, Kansas, to Galveston, Texas, 916 miles; and from Oswego, Kansas, to Denison, Texas, 260 miles. Since the commencement of this suit these rates have been made 40 and 45 cents respectively, but the same charges were then and are now being made over the same lines for distances more than a thousand as for distances less than three hundred miles. Yet the milling corporation complains only of the five cents on flour above the wheat rate which it must pay to reach the Texas market. The Texas price being the St. Louis price with the freight added, the consumer pays the increased price on all he uses, and his assent cannot be assumed because it is less expensive to bear the injustice than to make formal complaint. The Act to regulate commerce is of itself a continuing complaint against every undue preference, unreasonable charge or unjust discrimination, and the enforcement of the provisions of this Act is enjoined upon this Commission.

The cities of Galveston and San Antonio are a thousand miles from some of the mills and grain fields of Missouri and Kansas, and three hundred beyond the region of Texas wheat production. Wheat carried to these cities is there made into flour and carried back over the same roads, in part at least, while Kansas or Missouri flour goes directly to consumers in those cities, or at less distant railway stations.

To discourage the direct delivery of flour to Texas consumers, the roads assert the right to make the lower rate on wheat, and to so discriminate for their own advantage as to cause freight to be moved both in wheat to, and in flour from, the mill.

The right to so discriminate and to hinder direct delivery, and thus enhance the profits of Galveston and San Antonio

millers, and increase the revenues and charges of the roads at the cost of the consumers, is held to be lawful by the Commission.

It has been said that whoever could make two ears of corn or two blades of grass grow upon a spot of ground where only one grew before would deserve well of mankind, and do essential service to his country. If this be true, what then would be deserved from mankind by whoever would make lawful the burden of carrying bread two miles when to carry it one is sufficient?

No reason has been shown why any discriminating charges should be made on products carried southwest which are not made on the same products carried east over the same roads; and it seems to me that, wheat and flour being carried as they are by the defendants and other roads to eastern mills and consumers, at the same rate, they should be carried by the defendants to Texas at the same rate.

PROCTOR & GAMBLE *v.* THE CINCINNATI, HAMILTON & DAYTON RAILROAD COMPANY, THE PITTSBURGH, CINCINNATI & ST. LOUIS RAILWAY COMPANY AND THE PENNSYLVANIA RAILROAD COMPANY.

PROCTOR & GAMBLE *v.* THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY, THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY AND THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY.

PROCTOR & GAMBLE *v.* ORLAND SMITH AND H. C. YERGASON, RECEIVERS OF THE CINCINNATI, WASHINGTON & BALTIMORE RAILROAD COMPANY AND THE BALTIMORE & OHIO RAILROAD COMPANY.

Decided July 17, 1890.—Application for rehearing filed October 8, 1890.—Hearing on application for rehearing October 28, 29, 1890.—Application denied December 26, 1890.

A petition or motion for rehearing cannot be granted on mere allegation of error in the findings of fact, and such a petition or motion must be supported by proof showing *prima facie* at least that there was such error. The affidavits in this case fail to make such showing.

G. R. Blanchard and *Hugh L. Bond, Jr.*, for defendants, in support of petition.

Butterworth, Hall & Brown and *Mortimer Mathews*, for complainants, in opposition to petition.

MEMORANDUM.

BY THE COMMISSION:

This is a petition for rehearing of the above entitled cases. They were decided July 17, 1890, and a report and opinion therein was filed and is referred to for a statement of facts

and conclusions thereon. It is there stated that the controlling issue was whether the rate charged to and paid by the complainants to the respondent railroads for the transportation of the complainants' common soap in carload lots was just and reasonable. The Commission found in effect that the rates complained of were unreasonable to the extent they had been raised by changing the system of charges from that of net to gross weight. The complainants introduced evidence of different classes in support of their claim that the rate was unjust and unreasonable. One class was that for about ten years prior to a short time before the complaint was filed the defendants had charged a less rate than the rate complained of, and that although common soap was in the fifth class of the Official Classification the charge for transportation was only for net weight; that about a year before the complaint was filed and while common soap still remained in the fifth class, the defendants changed their practice of charging for the net weight to that of gross weight, thereby increasing the charge for precisely the same package about one-sixth.

The Commission found the fact in respect to the practice of charging for net weight only to be as alleged and as the evidence tended very strongly to show—indeed, the defendants' counsel did not deny it in argument.

It is not necessary to state the reasons set forth in the petition for rehearing, because petitioners' counsel specifically stated that the only point relied upon for a rehearing was that the Commission was misled and committed error in the finding that the defendant roads had for said term of years charged for net weight only, and that in any event this was not true as to the trunk lines other than the defendants, all which other lines would be affected by the final order of the Commission; and counsel claimed that they ought to be heard, although not complained of by the complainants, before being practically concluded by an order in a case in which they had not been made parties and had not defended.

We omit to notice the several reasons stated in argument by the counsel of the original complainants why no rehearing should be granted in behalf of th[illegible] last alluded to,

or to pass on the question on any ground other than on the strength of the affidavits filed in support of the petition.

These affidavits are of two classes: one by members of different firms of soap manufacturers in various localities; another by agents of railroad companies. Those of the first class are in about the same language except in names and dates. The affiants each states that to the best of his knowledge and belief it has been the custom of his firm for a period stated to tender to rail carriers for transportation shipments of common or laundry soap at actual gross weights, and that to his best knowledge such actual gross weights have been charged for by said rail carriers during said period.

It is idle to point out the weakness of such an affidavit. It is apparent. It does not state where or when his firm shipped soap, whether in carload lots or less (there being no complaint for rates of lots less than carload), or at what price; no detail of information is given; neither is it stated that the affiant has any personal knowledge in reference to shipments of soap, or had anything whatever to do with that department of the soap business. No substantial basis of knowledge or belief is given.

The other class of affidavits is quite as defective. They only state that the affiant is an agent of a railroad named, and to the best of his knowledge and belief it has been the custom for a period named to charge upon all shipments of common or laundry soap the actual gross weight.

There is in no instance a word showing the affiant had any knowledge whatever as to actual shipments of soap. They do not state what rates were charged or quantities shipped, whether carloads or less.

A motion or petition for rehearing can not be granted on mere allegation of error in the finding of a fact.

If it does not appear from the evidence on the original hearing that there was such error which did not appear in this case, as petitioners' counsel practically admitted in argument, then the motion when based on error in the finding of fact must be supported by proof showing *prima facie* at least that there was such error. That the affidavits utterly fail in this regard is too plain to warrant discussion or admit of

doubt. This failure extends, not only to the respondent railroads, but also to the other trunk line railroads, which are claimed to be interested in the final order, which was suspended in its operation pending this rehearing.

Without passing on the other grounds of defense suggested the petition for rehearing is denied on the ground stated, which leaves the suspended order in full force and effect, but leaves the Commission with reference to its future action as it was left in the former opinion by the expression as follows: "It is not improbable that in a more numerous classification than is found in the Official Classification a place might be found that would more exactly fit common soap than the lowest class, and it is not intended that this decision shall be regarded as necessarily conclusive as to rate upon the committee which is now understood to be engaged in an attempt to construct an improved classification with more classes than are found in the existing classification."

Judge COOLEY did not participate in the decision of this petition.

THE NEW YORK BOARD OF TRADE AND TRANSPORTATION, THE COMMERCIAL EXCHANGE OF PHILADELPHIA AND THE SAN FRANCISCO CHAMBER OF COMMERCE *v.* THE PENNSYLVANIA RAILROAD COMPANY, THE PITTSBURGH, FORT WAYNE & CHICAGO RAILWAY COMPANY, THE PITTSBURGH, CINCINNATI & ST. LOUIS RAILWAY COMPANY, THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, THE MICHIGAN CENTRAL RAILROAD COMPANY, THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY, THE CHICAGO & GRAND TRUNK RAILWAY COMPANY, THE NEW YORK, LAKE ERIE & WESTERN RAILROAD COMPANY, THE CHICAGO & ATLANTIC RAILWAY COMPANY, THE NEW YORK, PENNSYLVANIA & OHIO RAILROAD COMPANY, THE NEW YORK, CHICAGO & ST. LOUIS RAILROAD COMPANY, THE WEST SHORE RAILROAD COMPANY, THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY, THE GRAND TRUNK RAILWAY COMPANY OF CANADA, THE WABASH RAILROAD COMPANY, THE BALTIMORE & OHIO RAILROAD COMPANY, THE PHILADELPHIA & READING RAILROAD COMPANY, THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, THE BOSTON & MAINE RAILROAD COMPANY, THE LOUISVILLE, NEW ORLEANS & TEXAS RAILWAY COMPANY, THE ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, THE SOUTHERN PACIFIC COMPANY, THE UNION PACIFIC RAILWAY COMPANY, THE NORTHERN PACIFIC

RAILROAD COMPANY, THE CANADIAN PACIFIC RAILWAY COMPANY, THE TEXAS & PACIFIC RAILWAY COMPANY, THE ILLINOIS CENTRAL RAILROAD COMPANY, THE LEHIGH VALLEY RAILROAD COMPANY.

Complaint filed December 3, 1889.—Joint answer of original defendants filed January 9, 1890.—Additional parties defendant added February 8, 1890.—Answers of new defendants filed February 24–March 21, 1890.—Other carriers cited in and ordered to file verified statements April 21, 1890.—Leave to intervene in behalf of complainant granted to the Commercial Exchange of Philadelphia April 22, 1890.—Appearance of San Francisco Chamber of Commerce on behalf of complainant entered June 10, 1890.—Hearings had June 10, 11 and 17, 1890.—Briefs filed August 7 to October 16, 1890.—Decided January 29, 1891.

1. The Act to regulate commerce specifically provides for the regulation of the transportation of foreign merchandise when brought from a foreign port of shipment to a port of entry of the United State and transported from such port of entry to a place within the United States upon a through bill of lading, or when transported from a foreign port to a port of entry of a foreign country adjacent to the United States and transported from such port of entry to a place of destination within the United States upon a through bill of lading.

2. The regulation thus provided is such as regulates the rates, charges, facilities afforded and treatment of the foreign merchandise from the port of entry in either instance, as the case may be, to the place of destination of the merchandise within the United States, but it is not a regulation that extends to the control of rates made upon such foreign merchandise in the foreign port of shipment for its carriage to the port of entry of the United States, or to the port of entry in a foreign country adjacent to the United States.

3. With respect to that part of the carriage of such foreign merchandise between the ports of entry and the place of destination in the United States, the rule of the Statute is that it is entitled to no preference in rates, charges, facilities afforded and treatment over domestic merchandise or other merchandise when these are a like kind of traffic transported from such ports of entry to such places of destination, but as to that service stands upon the same basis of equality with domestic merchandise or other freight as to rates, charges, facilities afforded and treatment, and must be carried upon this

part of its journey under the inland tariffs of the carriers established for the transportation of domestic merchandise or other freights, and under the same rules governing their carriage as to weight, bulk, value, expenses of carriage, and all such other circumstances and conditions as enter into the making of just and reasonable rates, and of avoiding unlawful prejudice and unjust discriminations, such as is provided by the Statute.

4. The circumstances and conditions surrounding the making of the rates upon such foreign merchandise in the foreign port of shipment have had their weight and operation in its foreign carriage to the port of entry and in the charges made and facilities afforded for that service, but after such foreign merchandise has been brought within the United States on its way to destination in the United States, it encounters other circumstances and conditions that are controlling in this part of its carriage, namely, the laws of the United States made for the regulation of its rates and carriage.

5. The publication of such inland joint tariffs for the transportation of such foreign merchandise under the Statute and of advances and reductions should be made at the port of entry and also at the point of destination of freight in the United States, by posting the same in a public place at the depot of the carrier where the freight is received in the port of entry, and where it is delivered at the place of destination in the United States.

6. The term "a like kind of traffic," as it occurs in section 2 of the Act to regulate commerce, and as used in this report and opinion, does not mean traffic that is identical, but it means traffic that is of "a like kind" with other freight in the elements of a fair and just classification for the purpose of arriving at a just and reasonable rate and a rate that will avoid unjust discrimination and unlawful preference.

7. Commodity class rates described and discussed.

8. The power of interstate carriers to make commodity class rates and special class rates to meet the circumstances and conditions of traffic along their lines recognized and defined.

John D. Kernan, for New York Board of Trade and Transporation.

Read & Pettit, for Commercial Exchange of Philadelphia.

S. W. Sears, for San Francisco Chamber of Commerce.

James A. Logan and *Wayne Mac Veagh*, for Penn. R. R. Co.

James A. Logan and *A. H. Wintersteen*, for Pittsburgh, Ft. Wayne & Chicago Ry. Co. and Pittsburgh, Cincinnati & St. Louis Ry. Co.

Frank Loomis, for N. Y. C. & H. R. R. R. Co.
Ashley Pond, for Mich. Cent. R. R. Co.
G. C. Greene, for L. S. & M. S. Ry. Co.
W. A. Day, for Grand Trunk Ry. Co. of Canada and C. & G. T. Ry. Co.
J. A. Buchanan, for N. Y., L. E. & W. R. R. Co. and N. Y., P. & O. R. R. Co.
Baker & Daniels and *John P. Henry*, for Receiver of Chicago & Atlantic Ry. Co.
S. E. Williamson, for N. Y., C. & St. L. Ry. Co.
Ashbel Green, for West Shore R. R. Co.
W. H. Blodgett, for Wabash R. R. Co.
John K. Cowen and *Hugh L. Bond, Jr.*, for B. & O. R. R. Co.
G. R. Kaercher, for P. & R. R. R. Co.
R. W. De Forest, for Cent. R. R. Co. of New Jersey.
Sigourney Butler, for B. & M. R. R. Co.
Holmes Cummins, for L., N. O. &. T. Ry. Co.
J. M. Wilson, for Union Pacific Ry. Co.
John S. Blair, for St. L., I. M. & S. Ry. Co., Union Pacific Ry. Co. and Texas & Pacific Ry. Co.
C. H. Tweed and *J. C. Martin*, for Southern Pacific Co.
Garland & May and *J. C. Bullitt, Jr.*, for Northern Pacific R. R. Co.
A. C. Raymond, for Canadian Pacific Ry. Co.
F. I. Gowen, forLehigh Valley R. R. Co.

REPORT AND OPINION OF THE COMMISSION.

BRAGG, *Commissioner:*

The complaint in this case was originally filed by the New York Board of Trade and Transportation against the Pennsylvania Railroad Company, the Pittsburgh, Fort Wayne & Chicago Railway Company, and the Pittsburgh, Cincinnati & St. Louis Railway Company. Subsequently, by intervention, the Commercial Exchange of Philadelphia and the San Francisco Chamber of Commerce became parties complainant also, and in consequence of facts set up in the answers of the defendants it was found necessary to make quite a

number of other carriers defendant, as will be hereinafter explained.

The complaint charges in substance that the defendants, being common carriers engaged in the transportation of property between New York, Philadelphia and Chicago, and other western points, have, since April 4, 1887, in violation of the Act to regulate commerce, been and are guilty of unjust discriminations, in that they have been and are in the habit of charging the regular tariff rates upon property when delivered to them at New York and Philadelphia for transportation to Chicago and other western points, while charging other persons rates which are lower, and even fifty per cent. thereof, for a like and contemporaneous service under substantially similar circumstances and conditions when the property was or is delivered to them at New York or Philadelphia by vessel and steamship lines under through bills of lading from foreign ports and foreign interior points issued under an arrangement between the defendants and such vessels and steamship lines and foreign railroads for the continuous carriage at joint rates from the point or port of shipment to Chicago and other western points, the defendants' share of such through rate being, as aforesaid, lower than their regular tariff rates.

As an illustration of this there is a table in the complaint showing alleged rates on shipments from Dumferline, Scotland, to Chicago, Illinois, and from Liverpool, England, to Chicago, Illinois, as follows:

Rates charged per 100 *lbs., etc., in cases where imports were carried by the American Line to Philadelphia:*

Date.—Bill. 1888.	Points.	Goods.	Through Rate.	Rail and Ocean to Phila.	Inland, Phila. to Chicago.	Tariff, Phila. to Chicago.
June 25.	Dumferline, Scotland, to Chicago.	Linens.	76.40 cts.	44.50 cts.	31.90 cts.	69 cts.
1889.						
March 4.	" " "	"	88 "	42 "	46 "	69 "
July 1...	" " "	"	80 "	40.91 "	39.09 "	69 "
June 25..	Liverpool to Chicago.....	Anvils...	29.47 "	8.42 "	21.05 "	33 "
Feb. 27..	" "	"	26.79 "	8.42 "	18.37 "	33 "
April 15.	" "	Tin Plate				
June 17..	" "	Tin Plate C. L.	24 "	8 "	16 "	28 "

That by said alleged discriminations the defendants have

made and given and do make and give undue and unreasonable preferences and advantages to persons, firms, companies, corporations and localities interested in the transportation of imported traffic from the seaboard under such through bills of lading, and have subjected and do subject persons, companies, firms and corporations in and about New York and Philadelphia and those localities to undue and unreasonable prejudice and disadvantage.

That the charge as aforesaid, the lower rate on imported traffic than the regular tariff rates, constitutes a violation of section four of the Act to regulate commerce as amended, in that the defendants thereby have charged and received and do charge and receive a greater compensation for the transportation from the seaboard to interior points than under such through bills of lading they receive upon imported traffic carried to more distant interior points.

That in order to prevent the ascertainment of the actual inland rates, the defendants have failed and do fail to state in their published tariffs or in such bills of lading the inland charge separately from the ocean and other charges. That the Pennsylvania Railroad Company is an owner of or interested in the management and operation of the steamship lines running from New York and Philadelphia to foreign ports, and under the opportunity thus afforded it of fixing their through rates from the foreign ports and points it is enabled to and does practice the unjust discriminations complained of in connection with the other defendants in such a way as to make full ascertainment of the facts involved very difficult. And in connection with this last averment complainant prays that the Commission may cause a full discovery of said through rates to be made.

Full relief and all such orders and proceedings as may be necessary to prevent the continuance of the alleged violations of law are prayed for.

The defendants, the Pennsylvania Railroad Company, the Pittsburgh, Fort Wayne & Chicago Railway Company and the Pittsburgh, Cincinnati & St. Louis Railway Company filed a joint and several answer, in which they deny that they are guilty of unjust discrimination, or have violated section

four of the Act to regulate commerce as amended, according to its true spirit and purpose, or that either of them is interested in the management and operation of the steamship lines running from New York and Philadelphia to foreign ports.

That the Pennsylvania Railroad Company owns capital stock and bonded indebtedness of the International Navigation Company to the extent of less than one-sixth of the aggregate of such stock and indebtedness, but takes no part in, and does not assume, the control or supervision of the ships of said International Navigation Company, and does not claim or exercise any exceptional facilities with reference thereto by reason of its said stock and bond ownership.

They admit that it had been their practice for a considerable period prior to October 1, 1889, to charge less than their inland tariff rates upon import traffic under through bills of lading issued at foreign points to Chicago and other western points *via* New York and Philadelphia, but not as much less as is stated in the statement on page 3 of the complaint. They further allege that the arrangement between them and certain steamship lines, under which this practice prevailed, expired on the first day of October, 1889. They aver, however, that they are advised that said practice was necessary and may be justified.

First. The principle that a less sum may be received for a continuous passage over several lines than the sum of the local rates of all the parties to the carriage, had equal application whether all the lines forming such through route be within the limits of the United States, or whether a portion of that route, or some parties to the carriage, be beyond those limits.

Second. In competition with the route of defendants and said steamship lines from foreign points to Chicago there existed and exists a route *via* Montreal which has a complete and independent water as well as rail route from Montreal to Chicago, both of which are open to shippers by said competing line, and the reductions in the through rate, which resulted in bringing the inland rate accepted by the defend-

ants below their regular tariff rate, have been rendered necessary in order to enable them to obtain traffic *via* New York and Philadelphia, as against the competition of said Montreal line.

Third. As showing that the water and Canadian competition referred to affected other carriers as it did defendants, said defendants aver that the competing lines of railroad from the seaboard to interior points have constantly through the agents of the connecting water lines to Europe bid as low and sometimes lower rates on the same character of freight than those accepted by defendants; and on information and belief defendants charge that said lines accepted and accept a less amount as their proportion for the inland carriage for import traffic than they charge and receive on inland traffic between the same points.

It appearing from the complaint and answer of defendants that carriers other than those named in the complaint were necessary and proper parties defendant, the Commission by order of February 8, 1890, made the following carriers parties defendant, directing that they be notified to satisfy the complaint or answer the charges embraced in the complaint, and of that portion of the answer of the defendants which referred to their practices in this behalf, within twenty days from said date:

The New York Central & Hudson River Railroad Company.
The Michigan Central Railroad Company.
The Lake Shore & Michigan Southern Railway Company.
The Chicago & Grand Trunk Railway Company.
The Great Western Railway Company of Canada.
The New York, Lake Erie & Western Railroad Company.
The Chicago & Atlantic Railway Company.
The New York, Pennsylvania & Ohio Railroad Company.
The New York, Chicago & St. Louis Railroad Company.
The West Shore Railroad Company.
The Delaware, Lackawanna & Western Railroad Company.
The Grand Trunk Railway Company of Canada.

The Wabash Railroad Company.
The Baltimore & Ohio Railroad Company.
The Philadelphia & Reading Railroad Company.
The Central Railroad Company of New Jersey.
The Boston & Maine Railroad Company.
The Louisville, New Orleans & Texas Railway Company.
The St. Louis, Iron Mountain & Southern Railway Company.

By a further order in this case of date April 21, 1890, the following additional railroads were made parties defendant and each required to file with the Commission a verified statement setting forth whether it now carries, or at any time since the date of an order made by the Commission of March 23, 1889, has carried, imported traffic, whether on a through bill or otherwise, at lower rates than it contemporaneously charged for the like traffic not imported or not shipped on through bills, and the reasons for such lower rates, if charged:

The Southern Pacific Company.
The Union Pacific Railway Company.
The Northern Pacific Railroad Company.
The Canadian Pacific Railway Company.
The Texas & Pacific Railway Company.
The Illinois Central Railroad Company.
The Lehigh Valley Railroad Company.

The order of the Commission of date March 23, 1889, here referred to, among other things provided that, "imported traffic transported to any place in the United States from a port of entry or place of reception, whether in this country or in an adjacent foreign country, is required to be taken on the inland tariff governing other freights."

The following of said roads, made parties defendant as aforesaid, filed answers alleging conformity with said order of the Commission of date March 23, 1889, and that their inland rates are the same for traffic whether domestic or imported, and it is admitted by counsel for complainant "that there is no proof to the contrary;" to wit:

The New York, Lake Erie & Western Railroad Company.
The Lake Shore & Michigan Southern Railway Company.
The New York, Pennsylvania & Ohio Railroad Company.
The West Shore Railroad Company.
The Boston & Maine Railroad Company.
The New York, Chicago & St. Louis Railroad Company.
The Central Railroad Company of New Jersey.
The Philadelphia & Reading Railroad Company.
The Chicago & Atlantic Railway Company.
The Michigan Central Railroad Company.
The New York Central & Hudson River Railroad Company.
The Delaware, Lackawanna & Western Railroad Company and
The Chicago & Grand Trunk Railway Company.

Answers have been filed by all the remaining defendants. The following of these expressly or impliedly admit that since the order of March 23, 1889, they have accepted as their share of the through rate on traffic imported from a foreign country to interior points in the United States a less sum than they have contemporaneously charged for like traffic originating in the United States, to wit:

The Texas & Pacific Railway Company.
The St. Louis, Iron Mountain & Southern Railway Company.
The Louisville, New Orleans & Texas Railway Company.
The Illinois Central Railroad Company.
The Wabash Railroad Company.
The Southern Pacific Company.
The Union Pacific Railway Company.
The Northern Pacific Railroad Company.
The Baltimore & Ohio Railroad Company.
The Lehigh Valley Railroad Company and
The Canadian Pacific Railway Company.

As showing the grounds upon which these different carriers justify their action in this respect, which grounds are in some

respects different from each other, a brief outline is here given of their answers.

The Texas & Pacific Railway Company avers that one of its termini is the city of New Orleans and that the circumstances and conditions surrounding its import traffic are substantially dissimilar from those affecting its domestic traffic, and that the controlling forces which make its rate on the former less than on the latter are the water lines from Europe around Cape Horn to the Pacific coast; the water lines directly to Mexican seaports; the water lines *via* the Isthmus of Panama to the Pacific coast; the water lines to the Atlantic seaboard, together with the rail lines into the interior; water lines to the ports of New England, which connect by a through rail connection with the Canadian roads and then *via* those lines to the interior; the water lines to Montreal or Quebec, thence by the Great Lakes to Chicago or Duluth, and thence by the rail lines to the interior; the water lines to Quebec, thence by the Canadian Pacific to the ports of entry on the Canadian border, and the water line *via* New Orleans and the Mississippi river, St. Louis and other points reached by the inland carriers. A number of tariff sheets alleged to be on file with the Commission are cited in the answer of this carrier for the purpose of showing the extent of the area by which it, by means of its rail connections, distributes imports.

The St. Louis, Iron Mountain & Southern Railway Company, in justification of its rates on import traffic, alleges that shipments of such property reach the United States by way of New Orleans, and thence are brought to its terminus by the Louisville, New Orleans & Texas Railway Company and the Texas & Pacific Railway Company; and the interior ports of entry both of its own line and the lines beyond are reached by the Pennsylvania Railroad Company and its connections, and also by the Canadian Pacific and the Great Lakes operating the other railroad connections; and the rates received by the Texas & Pacific and ocean-line steamers are influenced and controlled by the said two routes and by all the routes between New York and Chicago which are in direct competition with the Pennsylvania Railroad and its connections.

The Louisville, New Orleans & Texas Railway Company avers that in order to get a share of the import traffic it accepts the same as contracted for by the ship agents at foreign ports, the through rate being usually divided between the ship and rail line, and that this is forced upon it by competitors by water—steamboats on the Mississippi river and its confluents; and also that the Illinois Central Railroad Company is a competitor with it for the import traffic for all leading points from New Orleans and pursues the same course as to import rates in order to secure such traffic. It further alleges that neither the letter nor the spirit of the Act to regulate commerce interdicts the acceptance by a carrier of a lower rate as its proportion of a through import rate than it charges for the like service for inland or local haul, the aggregate import rate being as large or larger than the local or inland rate.

The Illinois Central Railroad Company avers that while its proportion of the through rate from foreign to interior points on imported traffic carried by it has not been as great as the rate on the like domestic traffic, yet said entire through rate has in no case been less than the rate on the domestic traffic; that from the best advice it could receive on the subject this Commission, by its order of March 23, 1889, did not contemplate that the inland proportion of such through rate must necessarily be the same as the local inland rate, and that any other view of the case would have obliged it to relinquish the traffic, as competing rail carriers had tariffs in effect on this basis and thereby controlled the traffic prior to the establishment by it of the through rates; but that since March 18, 1890, it has not taken for shipment any import traffic, and to its great detriment has refrained from the business, for the reason that to meet the action of the competing lines it would have to make a less rate on the import than on the domestic traffic. This lets the Illinois Central Railway Company out.

The Wabash Railroad Company alleges that while it has in some instances accepted a less amount as its proportion of the through rate on import traffic than it has for the regular domestic rate between the same points, yet it has not at any

time received from any person or persons less compensation for the transportation of property from one State into or through another State than it received from other persons for doing for them a like and contemporaneous service in the transportation of a like kind of property under substantially similar circumstances and conditions.

The Southern Pacific Company avers that its import business is carried on as a connecting and constituent carrier in through freight lines under joint through rates from China and Japan and from England and Europe to interior points in the United States, said through freight lines being composed of ocean carriers from China and Japan to San Francisco and across the continent to the Atlantic coast, and of ocean carriers from England and Europe to New Orleans and connecting railroad lines across the continent to the Pacific coast. That its reasons for accepting proportions of such through rates less than its rates on domestic traffic are that the circumstances and conditions of the transportation are substantially dissimilar because of the competition of controlling force in each of the following particulars and respects:

First. By steamers passing from ports in Japan and China through the Suez Canal direct to the Atlantic seaboard of the United States, and by vessels sailing direct from said ports to the said Atlantic seaboard, and by steamers from said ports to Vancouver with connecting lines across the continent on British territory.

Second. By steamship lines running from the ports of England and Europe in connection with rail lines across the Isthmus of Panama to the Pacific coast, but to a greater extent by ships, principally foreign, sailing from English and European ports direct to the Pacific coast generally for a return cargo of wheat and other products of California and adjoining States and Territories; that by said joint through rates from China and Japan and England and Europe it has been able to receive some traffic important in amount and earned something over the actual cost of transportation, which it could not have secured and earned except by par-

ticipating as a constituent carrier in through lines and by accepting a proportional share of through rates.

Third. That the traffic from China and Japan is in teas; said teas are received by it at previously appointed days and in very large quantities, so that such traffic can be transported in special unmixed trains, and on this account can be carried at less cost than other like traffic not so received and shipped.

The Union Pacific Railway Company alleges that it is engaged in the import traffic between Asiatic ports and points in the United States, and also between European ports and points in the United States; that its lines are intermediate lines and on Asiatic business *via* San Francisco the Southern Pacific Company, and on European business *via* New Orleans and Forth Worth the Southern Pacific Company and the Houston & Texas Railroad Company, and *via* New Orleans and Kansas City the Louisville, New Orleans & Texas Railroad and the Kansas City, Fort Scott & Memphis Railroad; that the proportion of the through rate it receives on import traffic, though less than its domestic rate, yields in the aggregate a margin of profit; and the lines of which it forms a part are unable to obtain any greater compensation than is charged, on account of the competition of other carriers not subject to the provisions of the Act to regulate commerce, and that if not allowed to continue to handle this traffic as at present it will be wholly diverted to lines of transportation beyond the control of this country, to the serious loss of the respondent.

The Northern Pacific Railroad Company alleges that it is a connecting and constituent carrier of import traffic in through freight lines under joint through rates from Japan on ocean steamers to Tacoma, Washington, and thence with connecting railroad lines across the continent to the Atlantic coast, and also carries under through rates a small amount of such traffic from St. Paul, Minnesota, to points on the Pacific coast, said traffic coming on ocean steamers from English and European ports to Montreal, Canada, and thence *via* the

Canadian Railways to Sault Ste. Marie and thence *via* the Minneapolis, St. Paul & Sault Ste. Marie Railway to the respondent at St. Paul. That it is compelled to accept as its proportion of the said through rates a less amount (but yielding more than the actual cost of movement) than its rate for a like service on domestic traffic by active competition of controlling force, in one case by vessels plying between English and European and Pacific coast points *via* Cape Horn, and in the other case by steamers passing from the ports of China and Japan through the Suez Canal direct to the Atlantic seaboard of the United States, by vessels sailing directly from said ports to places on the said seaboard, and by steamers from said ports to Vancouver, then by connecting railroads across the continent on British territory, none of said carriers being subject to the Act to regulate commerce. It further alleges that the traffic from Japan is in teas and is received at previously appointed days and comes in very large quantities, so that it can be transported in special unmixed trains at less cost than other like traffic not so received and shipped.

The Baltimore & Ohio Railroad Company avers that its acceptance as its proportion of the through rates on imported traffic from England *via* Batlimore to points in the United States at somewhat less than its inland tariff rate violates none of the provisions of the Act to regulate commerce, because the rates that can be obtained for the carriage of such through business to Chicago and other competitive points are fixed and limited by the rates made by the ocean lines plying to Montreal, Portland and Boston in connection with the Canadian lines of railroad, and in order to get any of said business at all, it is necessary to meet said rates made by said competing lines.

The Lehigh Valley Railroad Company avers that the circumstances and conditions attending the transportation of import traffic are in many respects dissimilar from those attending ordinary inland traffic, but that the rates charged by it on import traffic since March 23, 1889, have been and are the same as the rates contemporaneously charged for domestic traffic, except—

First. In the case of contracts outstanding for a certain through import rate during a fixed unexpired period.

Second. In cases where the import rates are, as is usual, called for by the importer in advance of shipments and it happens that, after such rate has been fixed upon, the steamship rates were unexpectedly raised, or errors occurred in making the estimates for the through rate, they fall upon the foreign ocean and inland transportation and said through rate has proved to be less than the sum of the several tariff rates at the time of the shipment.

The Canadian Pacific Railway Company avers that its lines do not extend to any of the Atlantic ports and that it has no traffic or other agreement with connecting American lines reaching said ports, or with any Atlantic steamship lines with ports in connection with any American railway lines by which imported goods are received at rates less than those charged on domestic or local freight; and that goods imported from foreign countries *via* Montreal for interior points in the United States are carried by it and charged the same rates as are charged on like goods shipped by the local merchants of Montreal. Tariff No. 117, dated May 1, 1890, is attached to the answer of this company, under which, it is alleged, import and local shipments are carried.

The Grand Trunk Railway Company of Canada avers that in response to an order of this Commission it made a tariff of its full inland west-bound rates and added such tariff charges to those of its ocean steamship connections, with the result that for traffic for the United States *via* the St. Lawrence route said steamship connections reported that on that basis they could literally obtain none in competition with the lower rates charged *via* United States ports. The defendant then made a special commodity tariff for its inland charges on certain articles therein named, but secured only a small share of the United States business. That during the winter season its ocean steamship traffic is done *via* Portland, but it is advised by its steamship connections that the rates are still not low enough to secure sufficient cargoes of United States and Canadian traffic, and the steamships on their outward voyage from Liverpool are compelled to ballast partly

with coal; and that this difficulty in obtaining traffic lies, as it is advised by its steamship connections, exclusively in the severe competition *via* United States ports. And it denies the allegation that the low rates *via* Philadelphia are necessitated by the action of its ocean steamship connections. It admits that there is a complete and independent water route from Montreal to Chicago by canal, river and lake, and says that it is advised by its steamship connections that they give consignors the option of shipping by water or by rail from Montreal. As evidence that it has filed tariffs in respect to said traffic in pursuance with the rules of the Commission, it refers to its interstate tariffs No. $\frac{D}{619}$ and $\frac{F}{64}$, effective July 27, 1889, and November 25, 1889, respectively.

THE MATERIAL FACTS FOUND.

The material facts as found in this proceeding are that complainant is a corporation composed of merchants and traders in and about New York City. The merchants and business men composing the New York Board of Trade and Transportation in the business of reaching and supplying the consumers of the United States with imported luxuries, necessities and manufactured goods generally, are active competitors with the merchants at Boston, Montreal, Philadelphia, New Orleans, San Francisco, Chicago and merchants in foreign countries who import direct on through bills of lading issued abroad.

The intervening petitioner, the Commercial Exchange of Philadelphia, is a corporation duly incorporated by the State of Pennsylvania for the purpose of the advancement of trade and the improvement of facilities for transacting trade in Philadelphia, and is composed of merchants and traders in and about that city engaged in the business as above stated.

The San Francisco Chamber of Commerce, also an intervening complainant, is a body similarly composed of merchants and traders in and about that city, and is duly incorporated under the laws of the State of California; a number of its merchants are importers and merchants handling teas imported at San Francisco for supplying the American market.

After the proceeding had been commenced the Commercial Exchange of Philadelphia and the San Francisco Chamber of Commerce were permitted to intevene as parties complainant, inasmuch as the charges made by them against some of the defendant railroads were similar in character to those made by the New York Board of Trade and Transportation.

Since April 4, 1887, the respondents have been railroads and corporations engaged as common carriers in the transportation of property from some one or more seaboard points in the United States or Canada to interior American points; such transportation being in all cases under some common control, management or arrangement for the continuous carriage, so that each of the respondents constitutes the whole or a part of some through or continuous lines of transportation so engaged as aforesaid, under either its own or an established joint tariff, and each of the respondents is as to the said inland transportation within the provisions of the Act to regulate commerce, approved February 4, 1887, as amended.

The respondents are common carriers who furnish transportation for all competitors at home and abroad who seek to reach interior markets lying between the seaboard and the interior. Each of the respondents is practically the whole or a part of some vast railroad system which reaches every important interior market.

Many American manufacturers and dealers in almost every line of manufacturing and business are the competitors of foreign manufacturers for supplying the wants of interior American consumers, and under domestic bills of lading seek to require from respondents like service as their foreign competitors in order to place their manufactures with interior consumers.

On March 23, 1889, the Commission made an order, wherein, amongst other things, it was provided as follows:

"Imported traffic transported to any place in the United States from a port of entry or place of reception, whether in this country or in an adjacent foreign country, is required to be taken on the inland tariff governing other freights."

The following roads allege conformity with the said order of March 23, 1889, and insist that their inland rates are the same for all traffic, whether domestic or imported; and there is no proof to the contrary:

The Lake Shore & Michigan Southern Railway Co.
The New York, Lake Erie & Western Railroad Co.
The New York, Pennsylvania & Ohio Railroad Co.
The West Shore Railroad Co.
The Boston & Maine Railroad Co.
The New York, Chicago & St. Louis Railroad Co.
The Central Railroad Company of New Jersey.
The Philadelphia & Reading Railroad Co.
The Chicago & Atlantic Railway Co.
The Michigan Central Railroad Co.
The New York Central & Hudson River Railroad Co.
The Delaware, Lackawanna & Western Railroad Co.
The Chicago & Grand Trunk Railway Co.

Since March 23, 1889, it has been and is the practice of the following railroads to charge less than their inland tariff rates upon import traffic carried by them under through bills of lading issued at foreign ports by steamship lines running to American or Canadian ports at which the respondents' lines respectively terminate:

The Canadian Pacific Railway Company.
The Baltimore & Ohio Railroad Company.
The Wabash Railroad Company.
The Southern Pacific Company.
The Union Pacific Railway Company.
The Texas & Pacific Railway Company.
The Louisville, New Orleans & Texas Railway Company.
The St. Louis, Iron Mountain & Southern Railway Company.
The Illinois Central Railroad Company.

The Pennsylvania Railroad Company, the Pittsburgh, Fort Wayne & Chicago Railway Company and the Pittsburgh, Cincinnati & St. Louis Railway Company ceased this practice

on the 30th day of September, 1889, as they allege, and there is no proof to the contrary.

The following table shows rates charged by the Pennsylvania lines for inland transportation under through bills issued abroad in cases where imports were carried by the American line to Philadelphia and thence by rail to Chicago:

Date—Bill.	Points.	Goods.	Through Rate.	Rail and Ocean to Phila.	Inland, Phila. to Chicago.	Tariff—Philadel. to Chicago.
1888. June 25.	Dumferline, Scotland, to Chicago,	Linens.	76.40 cts.	38.20 cts.	38.20 cts.	69 cts.
1889. March 4.	" "	"	88 "	44 "	44 "	69 "
July 1.	" "	"	80 "	40 "	40 "	69 "
June 25.	Liverpool to Chicago,	Anvils.	29.47 "	14.73½	14.73½ "	33 "
Feb. 27.	" "	"	26.79 "	13.38½	13.38½ "	33 "
April 15.	" "	Tin Plate,				
June 17.	" "	Tin Plate, L. C.	24 "	12 "	12 "	28 "

The following table, compiled from data in the office of the Interstate Commerce Commission in regard to the tariff rates in evidence, shows through rates and divisions of through rates for the ocean and inland carriage on freights destined to the Pacific coast and imported from Liverpool through the port of New Orleans; and also freight rates on domestic shipments of like traffic originating at New Orleans, New York and Chicago:

Freight Rates in Cents per Hundred Pounds, to San Francisco, Sacramento, Marysville, Stockton, San Jose, Oakland (Sixteenth Street) and Los Angeles, Cal.

Commodities.	From Liverpool, Eng., *via* N. Orleans. Ship's pro-port'n	Inl'nd pro-port'n	Through	From New Orleans. La.	From New York, N. Y.	From Chicago, Ill.
Agricultural implements...	19	70	89	114	130	119
Blacking.....	19	70	89	106	120	110
Books.....	27	80	107	264	300	275
Boots and Shoes.....	27	80	107	370	420	390
Burlaps.....	19	70	89	180	200	185
Buttons.....	27	80	107	374	420	390
Candles.....	19	70	89	125	150	130
Canned Fish.....	19	70	89	106	120	110
Carpets.....	27	80	107	288	330	300
Cashmeres.....	27	80	107			
Cement.....	19	70	89	106	120	110

Chinaware	27	80	107	163	190	170
Chocolate	27	80	107	125	150	130
Cigars	27	80	107	370	420	390
Clothing	27	80	107	374	420	390
Confectionery	27	80	107	187	215	195
Cordage	19	70	89	125	215	130
Crayons and Chalks	27	80	107	125	150	130
Crockery	19	70	89	125	150	130
Cutlery	27	80	107	326	370	340
Drugs, Common	19	70	89	187	215	195
Dry Goods	27	80	107	374	420	390
Earthenware	19	70	89	106	120	110
Feathers	27	80	107	374	420	390
Glassware, Common	19	70	89	125	150	130
Gloves	27	80	107			
Glycerine	27	80	107	106	120	110
Groceries, N. O. S	19	70	89	370	420	390
Hair Goods	27	80	107			
Hardware	27	80	107	187	215	195
Hats and Caps	27	80	107	370	420	390
Hosiery	27	80	107	374	420	390
Lace	27	80	107			
Leather	27	80	107	326	370	
Linen	27	80	107			..
Linen Goods	27	80	107			.
Milk, Condensed	19	70	89	106	120	
Nails	19	70	89	106	120	110
Optical Goods	27	80	107			
Pins	27	80	107	264	300	275
Saddlers' Goods	27	80	107	370	420	390
Soap	19	70	89	106	120	110
Soda, Caustic, 2,480,162 lbs.	19	70	89	106	120	110
Tallow	19	70	89	106	120	110
Woolen Goods	27	80	107			

This table does not reduce articles carried by "measurement" to "weight," because carriers furnished no data by which this could be done, but, taking this table as a basis and making allowance for the difference between "measurement" and "weight" of 53 to 54 per cent. as claimed in evidence, it shows approximately the difference between import rates and rates on other articles.

There is in every case of imported traffic a through bill of lading. Inland through bills of lading began quite early in the transportation business. As to the ocean it is a more modern method of business and has been more difficult to

introduce. The amount of the through rate is substantially governed by the competition of other carriers. The through rate is a variable one. At Chicago it will frequently fluctuate every hour according to the supply of boats. The ocean rate does not fluctuate with such rapidity. The rail rate does not necessarily vary with the through rate unless the ocean line has some agreement with the railroad line to share the ups and downs. This fluctuation makes it more difficult to lay out business and gives advantage to favored shippers, if the rates are not published. It is very difficult to give publicity to frequently fluctuating rates.

The through bill of lading furnishes a collateral for the transaction of business; takes from the shipper and consignee both the care as to intermediate charges, elevators, wharves and costs of handling (which are fluctuating), and puts it on the carrier; it reduces the intermediate charges and very much facilitates the transaction of business and helps to swell its volume. The tendency of the through bill of lading is to eliminate the obstacles between the producer and consumer, and it has done much in that direction.

Imports are different to some extent in the case of different carriers; the rates are different as between the rail carrier and the vessel; in regard to some kinds of freight the methods of arriving at the rail rate are different in the case of some rail carriers to what they are with others; and it therefore becomes necessary to find the facts in a brief way, in regard to each of the leading rail carriers of imported traffic.

The imports handled by the Louisville, New Orleans & Texas Railway are heavy and bulky, consisting of tin plate, cement, soda ash and occasionally cotton ties. The proportion of the import rate received by this road is a paying rate. Between Memphis and St. Louis and to Kansas City the rail line gets sixty per cent. and the ship line forty per cent. of the through rate. To other Missouri River points the percentage is the same. The percentage of the through rate on the division between the steamers and the rail lines remains the same notwithstanding fluctuations in the through rate. The arrangement for such division is made by the railroad

with lines running from Bremen, Antwerp, Havre, Liverpool and London. The rates are made by the shipping agents in Europe in competition with lines from said ports to all American ports other than New Orleans. The rate varies from steamer to steamer, and the rates do not reach any interior foreign point, but are only to and from the ports.

The through import rate bears no fixed relation to the inland tariff rate for the local service. There is only one restriction upon the percentage of the through rate as compared with the inland rail line from the port of entry to the interior destination, and that is that the through rate from the European ports to the place of destination in the United States shall not be less than the rate from New Orleans proper to the place of destination on freight originating at New Orleans.

The tariffs on this import business are filed after the contract is made as soon as the road gets the proper showing that the goods are consigned.

The competition by the Mississippi River fixes the road's inland domestic rate north, and this competition practically bears the same relation to the inland domestic carriage as to fixing the rate that it bears to the import rates, but that which reduces the road's proportion of the through rate below the regular inland tariff rate is competing conditions existing in foreign ports—the through rate at North Atlantic ports. On a shipment from Liverpool to St. Louis the road and its through line connection would have to compete with the Cunard Line, the International Line and other lines running from New York, and with the Trunk Lines and others, and particularly the Baltimore & Ohio Railroad, on tin plate.

The objects of this carrier in taking import traffic at the reduced rate it is compelled to take it, are to build up the city of New Orleans and to secure the income from it for paying hands and operating expenses. The import traffic of the road has been growing largely in the last three years and the income from it amounts, as is estimated by a witness who occupies one of the chief offices of the road and is in a position to be familiar with its revenue, from fifty to sixty thousand dollars a year, and perhaps more.

ticipating as a constituent carrier in through lines and by accepting a proportional share of through rates.

Third. That the traffic from China and Japan is in teas; said teas are received by it at previously appointed days and in very large quantities, so that such traffic can be transported in special unmixed trains, and on this account can be carried at less cost than other like traffic not so received and shipped.

The Union Pacific Railway Company alleges that it is engaged in the import traffic between Asiatic ports and points in the United States, and also between European ports and points in the United States; that its lines are intermediate lines and on Asiatic business *via* San Francisco the Southern Pacific Company, and on European business *via* New Orleans and Forth Worth the Southern Pacific Company and the Houston & Texas Railroad Company, and *via* New Orleans and Kansas City the Louisville, New Orleans & Texas Railroad and the Kansas City, Fort Scott & Memphis Railroad; that the proportion of the through rate it receives on import traffic, though less than its domestic rate, yields in the aggregate a margin of profit; and the lines of which it forms a part are unable to obtain any greater compensation than is charged, on account of the competition of other carriers not subject to the provisions of the Act to regulate commerce, and that if not allowed to continue to handle this traffic as at present it will be wholly diverted to lines of transportation beyond the control of this country, to the serious loss of the respondent.

The Northern Pacific Railroad Company alleges that it is a connecting and constituent carrier of import traffic in through freight lines under joint through rates from Japan on ocean steamers to Tacoma, Washington, and thence with connecting railroad lines across the continent to the Atlantic coast, and also carries under through rates a small amount of such traffic from St. Paul, Minnesota, to points on the Pacific coast, said traffic coming on ocean steamers from English and European ports to Montreal, Canada, and thence *via* the

Canadian Railways to Sault Ste. Marie and thence *via* the Minneapolis, St. Paul & Sault Ste. Marie Railway to the respondent at St. Paul. That it is compelled to accept as its proportion of the said through rates a less amount (but yielding more than the actual cost of movement) than its rate for a like service on domestic traffic by active competition of controlling force, in one case by vessels plying between English and European and Pacific coast points *via* Cape Horn, and in the other case by steamers passing from the ports of China and Japan through the Suez Canal direct to the Atlantic seaboard of the United States, by vessels sailing directly from said ports to places on the said seaboard, and by steamers from said ports to Vancouver, then by connecting railroads across the continent on British territory, none of said carriers being subject to the Act to regulate commerce. It further alleges that the traffic from Japan is in teas and is received at previously appointed days and comes in very large quantities, so that it can be transported in special unmixed trains at less cost than other like traffic not so received and shipped.

The Baltimore & Ohio Railroad Company avers that its acceptance as its proportion of the through rates on imported traffic from England *via* Batlimore to points in the United States at somewhat less than its inland tariff rate violates none of the provisions of the Act to regulate commerce, because the rates that can be obtained for the carriage of such through business to Chicago and other competitive points are fixed and limited by the rates made by the ocean lines plying to Montreal, Portland and Boston in connection with the Canadian lines of railroad, and in order to get any of said business at all, it is necessary to meet said rates made by said competing lines.

The Lehigh Valley Railroad Company avers that the circumstances and conditions attending the transportation of import traffic are in many respects dissimilar from those attending ordinary inland traffic, but that the rates charged by it on import traffic since March 23, 1889, have been and are the same as the rates contemporaneously charged for domestic traffic, except—

petition between the ports of Europe and this country that makes the rates.

The tariff of the Texas & Pacific Railway to California and Pacific coast terminals is published and has been at that figure for a long time. The road has made that rate, and said to its steamboat connections they can go no lower. The road loses business frequently on that account. That is the difference between the California and the Missouri River business.

The steamship agents in Europe agree upon the through rate on Missouri River business and the road gets its agreed percentage. This road gets its full local rate to Dallas every time, and carries import traffic at the reduced import rate to Missouri River points and California terminals only. The regular local rate is charged on everything to Denver except earthenware; the import rate on that is 93 cents, while the regular local rate is $1. The Texas & Pacific Railway has an agent in England watching these rates all the time.

Over the line of the Southern Pacific Company merchandise from the ports of the United Kingdom and Europe by steamer to New Orleans and thence by rail to the Pacific coast on entire through rates is divided as follows:

Iron, cement, and tin plate, about 33 to 36 per cent.
Wines and liquors, about 10 per cent.
Dry goods and linens, about 15 or 16 per cent.
Groceries, about 10 per cent.
Mineral water, about 7 per cent., and the balance sundries.

Of this entire through rate the railroads received on the first and second classes above 75 per cent., and on the third class about 78.3 per cent. The balance of the through rate goes to the steamer. The Southern Pacific Company carries with three or four connecting steamer lines, on the through-rate system, and has tariffs fixed with these routes to California terminals and on file with the Commission. In comparing the railroad's proportion of the through rate with the regular local rate it is to be noted that fully thirty or forty per cent. of the import business of the road is what is called "measurement" freight. All tariffs from Europe are printed

"either weight or measure at ship's option." The charging by measurement makes the road's import rate from 2½ to 2¾ times larger than it would be in charging by actual weight, and this greatly reduces the apparent difference between the import rate and the low inland rate on about 45 or 48 per cent. of the business carried. This would make an increase of the apparent rate of the whole business carried of 53 or 54 per cent.

The road ships a different class of goods by the regular domestic inland rate to those brought under the import rates. The proportion of the through rate received by the railroad on import traffic does not pay a full and fair return for the service rendered, but it is taken because, on account of competition by the Atlantic lines, no higher rate can be had. This competition arises in the ports of Europe and the United Kingdom and seaports where the through-rate shipments are entered. Of the freight carried from the ports of Europe and the United Kingdom to Pacific coast terminals by all lines around Cape Horn, across the Isthmus, and over the railroad by way of Aspinwall, the Southern Pacific estimates that it carries about nine per cent.

The interior through rates of the road are somewhat higher on third-class goods than the rates by way of the Isthmus of Panama, and are about fifteen shillings lower on first class and about ten shillings higher on second class than the rates around Cape Horn. The import tonnage carried by the road in 1890 was about 14,000,000 pounds.

The interior and import rate does not apply to any part of the road's line except California terminals, for the reason, as is alleged, that the competition does not reach the interior points. On one portion of the import traffic carried by the road, namely, that carried by measurement, being about 45 per cent. of all, the road gets 2½ times as much as the tariff printed and filed shows, and on the remaining 55 per cent. the road gets the rate shown, and both are for the same service.

The term "ship's option, weight or measurement" does not mean that it is an option, but that whenever the bulk is lighter than the weight it must be taken by measurement.

The Southern Pacific Company engages in traffic from the United Kingdom and European points *via* New Orleans, and

from Asiatic points to all points in the United States west of the Missouri River. As a rule, the proportion of the entire through rate received by said company is less than the rate charged on the domestic traffic.

The business of the road on through freight from the United Kingdom and Europe is very small. The principal commodity is tin plate, being about one-third of the total. The rest is made up of mineral waters, liquors, a few dry goods, and a small quantity of wine and a little machinery. Sixteen per cent. would cover the dry goods and 10 per cent. the liquors. Tin plate goes to the Pacific coast for canning fruit and fish.

These through rates from Europe and the United Kingdom apply only to California terminals; to all intermediate points the regular inland locals are charged. The reason of this distinction is that at the Pacific coast terminals there is water competition by sailing vessels by the Cape Horn route, and steamships connecting with the Panama Railroad at Colon, which connects with the Pacific Mail Steamship Company at Panama.

The largest share of the tonnage is carried by sailing vessels around Cape Horn at nominal rates; the reason being that British vessels largely seek the port of San Francisco for return cargoes of grain. These vessels take a general cargo to San Francisco, the bulk of it being coal and cement, for which the Southern Pacific cannot compete. But they also carry case goods, general merchandise, liquors in a variety of packages, and in fact run through the whole category of traffic. It is not an infrequent thing for the vessels to come from Europe to San Francisco in ballast. The coal that comes by these vessels from Liverpool and other ports in the United Kingdom competes with the production of the Pacific coast.

The Pacific Mail Steamship rates are considerably higher than the rates by sailing vessels. The sailing vessel rates vary a great deal, ranging on general merchandise from 15 shillings, 6 pence, to 35 shillings, 6 pence, and on tin plate from 17 shillings, 6 pence, to 32 shillings, 6 pence, per ton of 40 cubic feet, or 2,240 pounds, ship's option.

The rates of the Pacific Mail Line range from 57 shillings, 6 pence, to 95 shillings per ton of 40 cubic feet. The rates of the Southern Pacific Company range from 100 shillings to 83 shillings per ton of 40 cubic feet, or 2,240 pounds, ship's option.

The canners on the Pacific coast are not able to determine in advance how much tin plate they will require; after their wants are known, depending on the prospect of the year's crop or salmon pack, they order. There is, therefore, a necessity for quick passage of tin plate, and this, together with the fact that tin plate is very valuable, and interest and insurance mount up rapidly, accounts for the road's being able to get such a large share of the tin plate traffic. Tin plate is forwarded from New Orleans under the company's general bond, and the duty is paid in San Francisco, but it has to be appraised at the first port of entry.

The ships engaged in carrying to San Francisco around Cape Horn are almost wholly British bottoms.

The road's proportion of the through rate would not, in the absence of competition, be a full and fair return for the transportation service rendered. It is justified on the ground that it gives to the road something more than the actual cost of movement of the freight. The theory is that whatever the road gets above the actual cost of movement of this traffic is so much gained, and it is thereby better able to discharge its fixed obligations, such as interest and those items of the general expense which do not vary with the amount of tonnage or traffic.

The road's import traffic is increasing and has about doubled, comparing 1885 with 1889. All this traffic went by sailing vessels and steamship lines *via* Panama until the Southern Pacific Company opened the New Orleans line. The claim of the company now is that not one-tenth of it is carried by its line, and that without the reduced through rate and the through line the road would get none of it.

So far as Europe is concerned the Southern Pacific Company does not regard the Canada lines as being serious competitors with it. The Northern Pacific Railroad Company carries little, if any, of this particular traffic. The nine-

tenths of the traffic not carried by the Southern Pacific Company, it is estimated, is carried by sailing vessels *via* Cape Horn and steamships *via* Panama.

The principal article of import from Asiatic ports about which there is serious competition between the American and the Canadian lines and sailing vessels is tea.

About ninety million pounds of tea are annually imported into the United States and Canada from China and Japan, by the following routes:

Steamship *via* San Francisco and rail.
Sail *via* Tacoma and rail.
Steamer *via* Vancouver and rail.
Steamer *via* Suez.
Sail *via* Cape of Good Hope.
Sail direct to San Francisco for local use.

About fifty or sixty per cent. comes by Suez or the Cape of Good Hope. These teas reach the Atlantic seaboard by all the said routes, except the teas which come by sailing vessel to San Francisco direct for local consumption. The Suez rate is generally small—the cheapest. Shipments by way of the Suez Canal to the Atlantic seaboard require fifty or sixty days from Japan and forty or fifty days from China.

The voyage by sea around the Cape of Good Hope is from four to six months from Japan and from three to four months from China. The prevailing rate on teas from Japan *via* the Suez Canal to New York is about seventy cents per hundredweight. The tea is taken only to New York, because that city is the center of the tea trade. On tea consigned from Japan to San Francisco the rate is generally $1 per hundredweight. The rate from Japan *via* San Francisco and thence by rail to New York is $1.50 per hundred-weight, and the through rate *via* Vancouver over the Canadian Pacific is the same; but sometimes there is a differential of 25 per cent. The Canadian Pacific can reach Chicago by lake carriers from Port Arthur, and has done so with regard to other freights than tea, but there is no evidence that it has ever done so in the case of tea.

The steamers passing through the Suez Canal are British;

the sailing vessels mostly fly the American flag and are generally kerosene oil vessels. These oil vessels are considered the best to charter for cargoes of tea. The rate on tea to the Pacific coast is controlled by the rate made by the Suez steamers. The San Francisco merchant is charged three dollars for the transportation from San Francisco to New York. The tea merchant in Japan has an advantage over him in the through rate of $1.20 from Japan *via* San Francisco and thence by rail to New York, if he desires to enter the New York market, but there is nothing to prevent his shipping to New York direct.

Before the practice of shipping on through bills through San Francisco was adopted (about 1867) shipments were made to New York entirely. New York now gets about 50 or 60 per cent. of the tea imported into this country. Some tea goes to New York, some to Chicago, some to Montreal and other places. When it comes by through bills over an American road it costs the same to take it to Chicago as to New York. New York and Chicago are practically the two American tea markets.

The teas brought into the United States and Canada by rail carriers are from Japan. The following table will show the teas imported into the United States and Canada from Japan from the year 1875 to 1889 inclusive:

Season.	*Via* San Francisco.	*Via* Vancouver.	*Via* Suez.	Sailed to New York.	*Via* Tacoma.	Total.
1875–6	13,323,946		1,906,235	9,980,621		25,210,802
1876–7	11,110,057		5,337,980	5,982,300		22,430,337
1877–8	14,448,229		5,590,647	3,232,708		23,271,584
1878–9	12,209,728		12,028,604	1,262,248		25,500,580
1879–80	17,222,299		15,092,653	2,334,527		34,649,479
1880–1	18,317,027		20,167,157	1,013,776		39,497,960
1881–2	19,718,806		14,549,262			34,268,068
1882–3	12,333,987		21,668,376	532,422		34,534,785
1883–4	16,217,369		18,017,876	22,538		34,257,783
1884–5	15,589,961		19,818,428			35,408,389
1885–6	19,048,022		16,730,911	315,951	2,998,517	39,093,401
1886–7	21,972,555	10,322,368	12,994,502			45,289,425
1887–8	17,414,589	10,063,766	8,779,827		6,840,971	43,099,253
1888–9	11,903,314	9,576,580	8,848,056	248,693	9,243,404	39,820,047
1889*	14,242,700	5,175,557	11,559,994	103,981	6,862,587	37,924,769

(* Up to November 23, 1889, from Yokohoma.) New York, January 13, 1890.

The following table shows the percentage of total imports of tea into the United States and Canada carried by the various routes at the dates named below:

Season.	*Via* San Francisco, Union Pacific and S. Pacific.	*Via* Tacoma, Northern Pacific.	Total *via* American Lines.	*Via* Steam, Suez Route.	*Via* Sail Vessels.	*Via* Vancouver, Canadian Pac.	Total.
1875-6.....	52¾ pc.		52¾ pc.	7½ pc.	39¾ pc.		100
1882-3.....	35¾ "		35¾ "	62 "	2¼ "		100
1885-6.....	48½ "	7¾ pc.	56¼ "	42¾ "	1 "		100
1886-7.....	48½ "		48½ "	28½ "		23 pc.	100
1887-8.....	40½ "	15¾ "	56¼ "	20¼ "		23½ "	100
1888-9.....	30 "	23¼ "	53¼ "	22¼ "		24½ "	100
To Nov. 23, 1889.....	37½ "	17¾ "	55¼ "	30 "		14¾ "	100

The Southern Pacific Company carry it under a through rate with the Pacific Mail Steamship Company and the Occidental and Oriental lines, which serve all the ports of China and Japan and connect with the Southern Pacific Company at San Francisco. The tea rates are made by the agents of connecting lines. Whatever the rate is the road takes fifty per cent. subject to one cent per pound minimum to the road—that is, the road's proportion of the through rate is in no case to be less than one cent per pound; as, for example, if the through rate be one and one-half cents the road's share would be one cent and the steamer connecting lines would take the one-half cent. In any other case the through rate is divided equally between the road and the ship.

The bulk of the teas comes *via* Suez. From 75 to 80 per cent. of the total importations of teas into the United States and Canada goes to New York; 60 per cent. of that total comes *via* Suez; the remaining 20 or 25 per cent. comes to the interior, chiefly to Chicago and Canada points.

Opportunities are frequent for the Chicago importers to use the Suez Canal and either pay the all-rail rate or the lake and rail rate. It is estimated by the general traffic manager of the Southern Pacific Company that during the season of 1889-90, beginning with May, 1889, the Southern Pacific Company carried via San Francisco gross about 22,000,000 pounds of teas, the Canadian Pacific about 12,000,000 pounds gross and the Northern Pacific about 7,000,000 pounds gross.

making a total of about 41,000,000 pounds carried across the continent, either over Canadian or United States territory. The quantity that was taken by way of Suez or the Cape of Good Hope approximated 48,000,000 pounds gross.

Originally the Southern Pacific Company began with a rate of five cents per pound, the tea being high priced as new tea and quick transit being desirable. Then as the desire for quick transit ceased the rate dropped during the season to four, three and two and one-half cents; but since the Canadian Pacific laid on their line the Southern Pacific Company had to be in with a lower rate. For example, in 1889 it began with four cents and got a half a cargo and soon got down to three and two and closed with a 1½ rate; and this year, 1890, had to begin with a rate of two cents and have notice from the steamship manager that the rate will go to one cent before the close of the season.

The rates *via* Suez to New York are always lower, ranging from .8 cents per pound to about 1.8 cents per pound. A comparison should be made between the rate *via* Suez and New York of 1.8 cents with the road's rate of three or four cents, and the Suez rate of .8 cents with the road's rate of one and a half cents. The Suez route has heretofore dictated the rate, though three cargoes carried from China *via* the Cape of Good Hope as shown by the evidence were carried at the rate of 25 cents per hundred pounds, or one quarter of a cent a pound; and according to the same evidence the highest rate known by that route was 60 cents per hundred pounds.

The rate of the Southern Pacific Company on tea, a shipment which originates at San Francisco, is in carloads $1.55 per hundred pounds and in less than carloads $3 per hundred pounds, a flat rate extending from the Missouri River to the Atlantic seacoast. The difference between the import rate and that from San Francisco grows out of the competition at the ports of China and Japan which does not exist at San Francisco.

The ground upon which said rate on tea from San Francisco is justified by the Southern Pacific Company as being reasonable in itself as compared with that of other like com-

modities is that tea is ordinarily first-class freight, being a valuable article, bulky in its nature and sensitive to damage, and must bear its proportion of the fixed charges.

The tea traffic originating at San Francisco is very small because the tea traffic is controlled in the east, originally in New York and now in New York and Chicago. Before the transcontinental lines were completed San Francisco shipped no tea. It is estimated that last year San Francisco shipped in carloads and less quantities about a million pounds of tea. San Francisco supplies altogether the country adjacent; it supplies Salt Lake and also Denver.

There is a slight difference in the cost to the railroads in the transportation of tea on the through line, the transportation which originates at China and Japan, and the cost of shipping teas, the origin of shipment being in San Francisco; and the difference is in favor of the through bill; but this difference is not regarded as one of any importance.

The through rates are not restricted to consignments of carloads, but apply to consignments of less than carloads. The bills of lading which the San Francisco merchants have presented show rates for shipments locally from San Francisco on one or two packages compared with shipments of twenty or more packages of through rates. In reply to this it is said by the company that such a comparison is not fair because when it gets down to two or three packages there is an arbitrary rate charged by the steamer which is not the case in larger quanties.

The average of the road's percentage of the through rate is much more than two cents a pound. That is, it averages more on teas from China and Japan for the service than on its carload rate from San Francisco. But how long this will continue is considered doubtful. Prior to the establishment of the Canadian line, the wide distinction that now exists between the local rates from San Francisco, and the through rates from China and Japan did not exist. It is claimed by the Southern Pacific Company that the Canadian Pacific Company forces this result. One reason why it is said the Canadian Pacific Railway has been able to force this result is that it reaches New York on shorter time, as it saves

quite a considerable distance—600 miles—in the steamship runs.

The proportion that the Southern Pacific Company receives of the through rates on teas with the reservation of not less than $1 per hundred minimum to the road, or one cent per pound, pays something over the cost of movement. The actual cost of movement of freight eastbound from San Francisco will not exceed three-eighths of a cent a ton a mile. Whatever the road gets above that is something over and above what it costs to handle it. It appears that this company does not carry any of this tea for less than half a cent a ton a mile, and hence it secures at even that rate a profit of one-eighth of a cent a ton a mile.

The general manager of the Southern Pacific Company testified that he had endeavored to bring the steamers that are operating in connection with the Canadian Pacific and Occidental and Oriental and Pacific Mail Lines together and to get the Canadian Pacific and the Northern Pacific and his own line, the Southern Pacific, to agree that they will fix arbitrary rates from the ports of entry only with provisions that they can charge them regardless of what the fluctuations are, and say they will continue to do so until the steamer lines stop their quarreling and get things back to a reasonable basis. The Northern Pacific Company was eager for this but the Canadian Pacific answered that they could not do it.

The evidence in behalf of the Southern Pacific Company further showed that the effect of any attempt of that company to increase the through rate upon traffic would be to cause it to leave that road and to leave the port of San Francisco, and under the present policy to go *via* Vancouver and the Canadian Pacific; that it would be an absolute disadvantage to the Board of Trade and Transportation of New York and Philadelphia to take away tea from the American lines and to give it to the British lines; that the Southern Pacific Company has no quarrel with San Francisco in this matter, but cannot do what San Francisco wants, because the law forbids it; and that the through rate is a rate which the Southern Pacific is forced to take by the circumstances and

conditions which are not within its control, and which exist at the ports of China and Japan and do not exist at the port of San Francisco.

There is also testimony to the effect that the Canadian Pacific Railway Company is now completing vessels which, under the Admiralty Laws of England, will obtain a subsidy of 60,000 pounds sterling ($300,000) per annum, and it will put these vessels on early in 1891, and that it is expected when this is done that these vessels will make the time between Yokohama and Vancouver in ten days.

Over fifty per cent. of the teas imported into the United States by all the lines is China tea. But the proportion that comes overland is greater of Japan teas than of China teas. Three-fourths of that portion which comes *via* the Pacific coast to the ports of the United States is Japan tea; not more than one-fourth is China tea.

All of the official publications as to export rates, etc., of teas, deal with the contents of the package and not the gross. The percentages of the totals received on the Pacific coast at San Francisco and Tacoma together have, relatively to the total receipts on that coast, increased during the last three years, and the American lines have increased their tonnage, but the percentage of that increase is not shown by the evidence.

Before the opening of the Vancouver route no teas of any consequence went that way; the teas then went *via* San Francisco and at higher rates than to-day; and the percentage of the tea traffic which has gone through the Suez Canal during the last two or three years has been about 60 per cent.

The vessels used from Port Arthur across the lake to Chicago, it is claimed, are American vessels, for the reason that none but American vessels can participate in the coastwise trade.

It appears that the steamer classification of the different kinds of goods under which the steamer ships on through bills is different from the railroad classification under which such freight is shipped over the railroad; consequently under these through bills articles would be carried in a different

classification from that which prevails if they are shipped from the seaport to the interior.

The earnings of the Southern Pacific on tin importations are five-eighths mills per ton per mile, and the tariff on tin plate from New Orleans would probably take a rate of a cent a pound, which would be four-fifths of a cent per ton per mile.

The average time of a sailing vessel from Liverpool to San Francisco is four months, frequently 95 days, and sometimes, in distress, six months. The time of the Southern Pacific and its connections from Liverpool to San Francisco is 25 or 26 days.

If the through rate should go considerably below 1½ cents a pound on tea the Southern Pacific Company necessarily would have to abate its minimum one cent or the steamers could not run. Any rate that is made by the Canadian lines or their steamship connections under the policy they now adopt would have to be made by the Southern Pacific, or else it would have to go out of the business. The general manager of the Southern Pacific Company testifies that, as he understands the Canadian contract, the Canadian Pacific has no control over the through rates or over their proportion of these rates; that the difference between the Canadian Pacific and the Southern Pacific is this: while the Southern Pacific agrees that, subject to its one cent minimum, it will take 50 per cent. of the rates, it is not tied up in a contract that would prevent it any day from changing these provisions, while the Canadian Pacific is tied up by such a contract. This matter will be found explained by the testimony offered in behalf of the Canadian Pacific Railway Company, which will be noticed hereafter in this report.

The one cent a pound that the Southern Pacific Company gets is for carloads and less than carloads, subject to the exception where the steamer makes a difference on one or two packages given it alone; and also subject to the exception as to how this business came to the Southern Pacific Company. The difference which the road gets in a small consignment of two or three packages of tea under the through bill is determined by the steamer, but at any time that the road wants to change this it can do so.

Whatever the steamships get higher than the one cent minimum rate is for them to determine, in one sense; but, as before said, the road can change these provisions and its relations to the steamship companies any day it chooses. It is admitted by the Southern Pacific Company as being possible, but extremely improbable, that on these through bills, under the arrangement between the steamships and the Southern Pacific Company, less than carloads will be carried at a cent a pound, while the San Francisco merchant desiring to ship a carload to the east would have to pay $1.55 per hundred pounds. The San Francisco shipper would have to pay $1.55 per hundred pounds in carloads, and in less than carloads $3.00; whereas the through shipper pays one cent a pound for the same transportation.

The difference that is made is not based on the cost, for it is admitted by the Southern Pacific Company that the difference would be unappreciable in the cost of handling like quantities of tea as between San Francisco local shipments and a cargo from the ship. No evidence has been introduced that there has ever been such a thing as the diversion at San Francisco of freight on these through bills from its destination to a local consignee.

It is further admitted by the Southern Pacific Company that if all the competitive difficulties in the foreign ports were eliminated, there would be no reason why the inland tariff should not be a rate for all the business, whether carried under a through bill or a local bill.

On shipments from New Orleans the rates are not fixed by the Southern Pacific Company's agent in Europe, but the rates are the published tariff rates, which are the subject of agreement between the traffic manager of this company's Atlantic system and the representative of the steamship lines, whose headquarters are at New Orleans, and whose action is subject to the approval of his home office. The steamship agents have no authority to depart from the rate in the tariff without the road's consent. That consent is obtained from Mr. Schriever, traffic manager of the Atlantic system of the Southern Pacific Company. The rates are not fixed from shipment to shipment.

If an occasion should arise where, in respect to a very important class of freight, a modification of that tariff was necessary, a communication would probably come from the home office in the European port to their representative in New Orleans, and he would confer with Mr. Schriever, and Mr. Schriever would approve or disapprove of that change. If Mr. Schriever approved of it, the rate would be put into effect, but not before, and it would then go into effect immediately; there would be no ten or three days notice.

The foregoing is admitted by the Southern Pacific Company to be its practice and method of procedure in regard to this class of freight.

Of the 14,000,000 pounds of freight reported in 1889, about forty per cent. was taken at an estimated weight; or, in other words, that 14,000,000 pounds represents a tonnage of 36 per cent. more than the actual tonnage carried. About 33⅓ per cent. of that tonnage, which is tin plate, goes by the actual weight, and is figured at 3,507,000 pounds on that 14,000,000 pounds. It would really be a greater proportion of the whole if the exact weight of all was given. Witnesses for the Southern Pacific Company testified that they have never known of a case of tin plate being taken on a through bill to local points on that road's line. They further testified that there is no appreciable difference in the circumstances and conditions which affect the expense to the road at New Orleans in handling import goods and in handling local goods.

In explanation of its calculations the general manager of the Southern Pacific Company testified before the Commission that when he said the road's rate paid the cost of the train men, he included in that case the pay of the crew, the cost of fuel, the proportion of the contract repairs based on the ton miles made in the ratio of the ton miles that the car or train would make to the total ton miles of the road—the expense of loss and damage figured on the same basis; these are the principal, and it may be said the total, charges against the actual cost of movement—the only charges which may be said to be influenced by the varying conditions of the traffic, whether it is more or less. He further testified

that when he speaks about the cost of transportation as being 1¼ cents he includes everything—fixed charges, general expenses, taxes, and repairs.

It appears that the Southern Pacific Company has retained its proportion of the traffic at the lower rates forced by the Canadian Pacific, and that the latter took what traffic it obtained from other competitors. It further appears that the present condition of the east-bound rates has been caused by the competition of the Canadian Pacific Railway Company and the American transcontinental lines with each other. The difference in the tea trade between the gross and net weight is about 25 per cent.

Evidence was offered at length by the Canadian Pacific Railway Company, from which the following appears:

That the through rates of this company *via* Montreal to American interior points are generally made by the steamship companies. The road connects through the regular lines, the Allan, the Dominion, the Beaver, the Thompson, and the Donaldson Lines, and they generally make the through rate. When the road makes the rate it is made on the rate ascertained from the ocean carriers, to which are added the road's inland rates from Montreal to destination. These local inland rates are published and the tariff is sent to the Interstate Commerce Commission, and applies to any line of steamers bringing traffic to Montreal. The tariffs No. 1021, of May 1, 1890, and No. 6, dated May 10, 1889, show the inland proportion on all import traffic the road brings from Europe *via* Montreal. Montreal is the only port at which the road receives imports. It has no connection to Portland.

The road does not make import rates from Montreal to points in the United States in connection with any American lines of steamers. These import rates *via* Montreal have been in effect two years. There was great difficulty in getting the steamship companies to agree to these rates, because, as they said, of the terms and rates which they had been in the habit of receiving from the American lines run-

ning to the ports of Baltimore, Philadelphia and New York. The Allan Line is probably one of the largest steamship lines in the world, running between 45 and 50 steamers, and to almost every point.

As to Asiatic trade, three years ago the Canadian Pacific Railway Company in connection with a line of steamers owned by parties in England became a competitor for that traffic, finding it advantageous to do so on the propositions made to the company by the connecting steamships. This is the fourth season the road has been in that traffic. It was taken in connection with the steamships on a division arrangement of through rates. The service that is now running is temporary and will be displaced in the course of four or five months by the railway company's own new vessels. The arrangement of the company with these steamship lines was similar to that of the American lines, but in October last the steamship companies notified the road that they would cease to connect further unless it changed the terms under which they were connecting. The steamship companies wanted a larger division of the rates and more power to control the business. The Canadian Pacific Railway Company had to concede to some extent these demands of the steamship lines or accept the alternative of closing the line pending the completion of its vessels, which will not be until March 1, 1891. The road could not afford to retire from the business and leave a gap of six or seven months.

The English line of boats now running in connection with the road's line is inferior in passenger accommodations and runs at a disadvantage on that account.

Statistics kept on the subject show the traffic taken by the Canadian Pacific Railway Company has been nearly all diverted from the Suez Canal. The general manager of the Canadian Pacific Railway Company testified before the Commission that in his opinion the American lines have lost none of that traffic.

From May 30, 1887, to April 25, 1888, the Canadian Pacific carried Chinese and Japanese teas 18,584,353 pounds; nothing is credited to the Northern Pacific that year. From May 18, 1888, to April 18, 1889, 21,840,337 pounds were carried

by the Canadian Pacific; nothing is credited to the Northern Pacific that year. From May 9, 1889, to April 15, 1890, the Canadian Pacific carried 14,606,140 pounds, and during the period last mentioned the Northern Pacific carried in sailing vessels 7,618,018 pounds.

The Canadian Pacific Railway Company has not made any import rates *via* American seaports to interior points in America from Europe.

The special class upon which a rate of 13 cents per hundred pounds is made by the road covers a species of articles not produced in Canada, such as tin plate and such things; in other words, articles of imports.

The road has tariffs from Montreal west. These tariffs are issued at the opening of navigation every year. At the close of navigation the rates are somewhat higher, as in the summer the road has the River St. Lawrence and lake competition; the winter tariffs take effect about November. In summer they are changed for what are called summer tariffs. The road has never done any business in winter to United States points, but may do some hereafter. This refers to lines to Chicago and west of Chicago, to which the road has heretofore had no connection for that particular business. In the winter time the road is obliged to do that business through American connections, and they, being the initial lines, take the responsibility to the government for adherence to the law.

The general manager of the Canadian Pacific Railway Company testified before the Commission that he knew only one Anderson line of steamers, and that is the line plying between London and Australian points; that there is no such line in connection with the Canadian ports; and the seaport connections of the witness' road in the east are Montreal and St. John. The road has issued some, but not many, through bills of lading by way of American ports to points in the United States.

The road generally makes through rates from China and Japan on tea to all points in the United States on a line drawn east and west through Chicago. Not much of this is south of Chicago. The road's operations are generally con-

fined to Chicago and points north in the United States. The road makes through rates to New York City and all the way through to the Atlantic coast. The division between the road and its connecting lines is not the same to Chicago and New York, because the road's division and that of the steamers vary as the road has to pay out arbitraries to connecting lines.

The arrangements with steamship connections of this carrier as to its Asiatic traffic with steamship connections and rates are similar to those of the Southern Pacific Company.

Up to the time that the evidence showed that the steamship connections made demands for more liberal terms the road took out the arbitraries which accrued to connecting lines, and the balance of the through rate was divided equally between the Canadian Pacific and the steamship companies. At that time, which was the fall of 1889, the road had to increase the proportion of the steamers, and the road then gave the steamers greater powers as to rates. The arrangement between the railroad and the steamship lines is a part of the records of the company. But the general manager of the company testified that he did not know whether a copy of it had been filed with the auditor of the Interstate Commerce Commission. At the time when the railroad divided equally between itself and the steamships after taking out arbitraries for connecting lines there was a general understanding that the steamship companies in making rates should not go below 1½ cents a pound. If they did go below that rate they would have to stand it themselves.

One dollar and fifty cents a hundred or a cent and a half a pound, one-half going to the steamship lines and one-half to the railroad, if the distance were 3,000 miles, would be exactly a half a cent a ton a mile. The road does not carry any other class of freight at that rate from the Pacific coast. Tea generally bears the lowest rate.

There have not been more than two or three cases in the last three years where tea that came across the Pacific was taken off and stored at the road's Pacific terminal and the journey afterwards resumed. In such cases the road has agreed that, if the journey was resumed in thirty days, it

would take the traffic at the through rate. This related only to Canadian teas. The tea to American ports must go direct. None of that has ever been held over at all.

While the route *via* Port Arthur to Chicago by water is a possible one it is altogether improbable. The frequency of handling would prevent the adoption of such a route and in addition thereto time would be against it. The loss resulting from such a route would be far greater than any advantage gained, and no tea has been shipped by the Canadian Pacific Railway Company by this route.

Tea is not, as is generally supposed, of great value, nor is it exceedingly difficult and risky to transport. The facts are the opposite of that.

Under the present arrangement between the road and the steamship lines, if the rate of $1.50 from Yokohama to eastern points was reduced, the road would have to share the loss; under the former arrangement the steamship lines would have to bear the whole reduction. This latter arrangement was made some time in the latter part of October, 1889.

There is a general understanding among steamship companies that they will reduce rates to the extent necessary to fill their vessels, and will accept rates that are offered by sailing vessels. While no tea has gone over the road's line by the route from Port Arthur to Chicago, the general manager of the Canadian Pacific Railway Company thinks there has been a little consignment of some other traffic, and mentions a small consignment of rice, but says the road had nothing to do with it. The road never uses the lake route in shipping merchandise from Asiatic points to lake ports in the United States. It has never used water transportation west of Montreal to the United States for American business.

The road in summer, by way of Montreal, takes flour originating at Minneapolis or St. Paul to points in England; but in the winter time that business goes by way of New York and Boston. There are no through rates made to interior inland points in Great Britain within the knowledge of the general manager of the Canadian Pacific Railway Company and as he testified before the Commission.

The ocean voyage from Yokohama to Vancouver is some six or seven hundred miles shorter than to other points. Vancouver is about eight hundred miles north of San Francisco. The advantage in summer by that route is about seven hundred and fifty miles and in winter about four or five hundred miles.

The rail rate from Vancouver to New York is sometimes one dollar per hundred pounds on tea and sometimes more and sometimes less than that rate. The highest rate ever known on tea was five cents a pound. The advent of the Canadian Pacific in connection with the steamer lines necessarily affected the business. The improved methods and new lines doing business were bound to cheapen the rates. The rates are uniform from Asiatic ports. The five-cent rate spoken of was before the Canadian Pacific was completed. The rail part of the through rate from Yokohama is the same without regard to the distance. The rate from Yokohama to Winnipeg, practically half way across the continent, would be just the same as from Yokohama to Montreal; and similarly the rates are just the same from Yokohama to Chicago as from Yokohama to New York by way of Chicago.

The general freight agent of the Pennsylvania Railroad Company testified in regard to this business in substance as follows:

The Pennsylvania Railroad Company makes through bills from foreign ports to interior American ports in connection with the Red Star Line, the International Line, the Inman Line that sails from Liverpool to New York and Philadelphia, and through the lines of the Baltimore Storage and Lighterage Company through Baltimore. The lines are from London, Swansea, Glasgow, Leith, etc.

Since the Act to regulate commerce went into effect the Pennsylvania Railroad Company has had a percentage arrangement with all these steamship lines. The railroad took four miles for the ocean carriage and gave one mile for that. For example, the distance from Liverpool to Philadelphia is 3,680 miles. The road calls that 920 miles for the ocean carriage. The road's distance from Philadelphia to

Chicago is 833 miles, so the ocean line received $\frac{920}{1753}$ while the railroad received $\frac{833}{1753}$.

The basis for establishing that percentage was the business for five years. It was found that if during these five years these percentages had been used in lieu of giving the ocean lines just what they did receive the result would have been substantially the same. The actual operations for the five years preceding were taken and formulated into an agreement percentage. This arrangement in reference to percentages continued up to September 30, 1889. Since that date the road has charged its full inland rates upon this import traffic. The effect on the road's business has been, as the steamship agents state, that it has considerably fallen off. The steamship lines have gone on to protect their customers against outside competition, but the railroad has stated to them positively that it would charge the full inland rate on the traffic and has done so. The steamship lines are now standing the competition at the foreign port notwithstanding this, and the railroad has not participated in said foreign competition.

The railroad only knows the rates as they apply from the seaport on the other side. The ocean lines take care of the interior rates on the other side. The steamship lines can hold on in meeting this competition at foreign ports only for a certain length of time, while the road maintains its full inland rates. It is only a question of time when they will be forced out.

The steamship lines have never assented to the road's charging its full inland rates, and have been making demands on the road for a proper division of the through rate. If it were definitely determined that the road was not at liberty to charge less than the full inland rate, the result would be that it would effectually close every steamship line sailing to and from Baltimore and Philadelphia.

The Canadian competition has been the most effective and vigorous this road has had from any of the lines. It is a fact, however, that the Baltimore & Ohio took freight on these through rates in addition to the Canadian lines. Some of

the other trunk-line roads got some of this import traffic, but they all claim they charged the full inland rate upon it.

While the steamship lines running to New Orleans must have some effect upon the road's rates to interior points, yet the road has never regarded that as serious competition. The rates to Chicago *via* New Orleans by the Harrison steamship lines are about the same as the Pennsylvania Railroad's rate *via* Philadelphia, and that is competition with the Pennsylvania Railroad. All the steamship lines running to New Orleans connecting with railroads for shipments to interior points are competitors of the Pennsylvania Railroad. The Pennsylvania Railroad Company gets very little import traffic through the port of New York, and all the import traffic that comes through the port of New York for other lines is in direct competition with the road's Philadelphia rate.

The Pennsylvania system has been carrying import traffic on through rates from foreign countries about seven or eight years, and those rates were not, when they originated, affected by any competition of the Canadian Pacific Railway.

If the inland rates were maintained from all ports there would not be any difficulty in holding such inland rates and in the ports respectively holding their business.

The reduced through rates by the Pennsylvania Railroad were made by the steamship agent in Liverpool to points as far west as the Missouri River, to points in the western country east of the Mississippi River, in Ohio, Indiana, etc. This through rate was made by the steamship's agents in Liverpool, because, being on the ground, they were familiar with the competition and with the requirements of the traffic and the road authorized them to make these through rates in competition with these conditions.

About forty or fifty million tons of tin plate are brought into the country by the lines of the Pennsylvania Railroad Company through the three ports of New York, Philadelphia, and Baltimore, and carried annually to the interior.

The Pennsylvania Railroad does not take this import traffic on the steamer classification, but takes it on rates per hundred pounds. The road has a classification—the regular trunk-line classification, the Official Classification. Pitts-

burgh, Erie and Harrisburg were not regarded as competitive points, and the authority given to the steamship agents to make rates to these points was not entirely called for by the competition with the Canadian route. Through the central and trunk-line territory there is one uniform classification, and that is the classification upon which the Pennsylvania Railroad has been uniformly carrying.

The Pennsylvania Railroad takes traffic from other lines than the ones which it has been heretofore operating with on the percentage basis. It gets freight from all lines in New York. Long before the enactment of the Interstate Commerce Law the great difficulty in the experience of this road in getting steamship lines to import freight to Baltimore was that these steamship lines were sailing in connection with Canadian lines—the Grand Trunk Roads—with which they could make arrangements for a reduction in the import rates on the business they gave to the Canadian roads. When the rates have been cut on import business it has been the experience of this company that the cuts have been inaugurated by the Canadian lines as a rule, as evidenced by the bills of lading under which the Old Dominion Line and other lines are taking freight by the Canadian railroads as well as general statements of steamship agents on the other side. The majority of the reduced rates have always been inaugurated by the Canadian lines for the last three or four years. The same condition of things pertains also to export business generally.

Among the bills of lading set out in the complaint is one dated June 17, 1889, on tin plate from Liverpool to Chicago, with a through rate of 24 cents, and the division would be about 12 for the rail and 12 for the ocean. The regular inland rate at that time was 28 cents from Philadelphia. Eleven cents from Philadelphia is a little less than three mills per ton per mile, and $33 per car. There is no money in carrying freight at less than three mills per ton per mile. No traffic, however, which the road carries can be considered alone by itself. Taking this traffic alone and by itself $2.20 per ton certainly did not pay the road, but furnished loading for empty cars. Separately by itself that rate hardly paid the cost of

transportation. During the time that the road carried import traffic at the reduced inland rate the rule was that so far as the traffic itself was concerned, and not considering it in relation to other things, it was carried at less than the cost of transportation.

The general freight agent of the Pennsylvania Railroad Company testified that in his opinion a fair fixed relation can be maintained between the inland tariff rate and the inland proportion of the through rate if the agents of the steamship lines in Liverpool would do substantially what the railroads had to do in New York, namely, get together and agree upon what are fair rates considering the competition, and every element that enters into the making of rates. But if the agents in Liverpool should not do this, but should remain engaged in active strife and competition by all the different shippers to get traffic for the interior lines of the United States to interior points, the rule would be that all lines running from the seaports to the interior would have to carry at low rates, scarcely paying, as above stated, the cost of transportation. In making these through rates, originally there was a differenee between carloads and less than carloads. The difference was the same as that made on the inland traffic and about approximately in the same proportion.

On these through rates which were in force prior to September, 1889, the ship did not have the option between space and weight on the Pennsylvania line. The Pennsylvania Railroad shipped entirely by weight. The steamship may take the traffic at measurement rates or weight, but when it reaches the Pennsylvania Railroad it is invariably reduced to cents per hundred.

The through import rates, in order to give information to shippers as well as to the general public interested in them, should be posted where the ship loads, say at Liverpool, for instance, for Liverpool traffic.

The general freight agent of the Pennsylvania Railroad further testified before the Commission that in his opinion the basis on which this business was conducted by the Penn-

sylvania Railroad, with the steamship lines was reasonable as between the shippers. He knew of no more equitable or reasonable adjustment as between the ocean and land carriers than that stipulated in the agreements on file with the Commission, and if this agreement were in force as to Atlantic ports there would be no difficulty in maintaining the rule of the fourth section of the Interstate Commerce Law, the long-and-short-haul clause. In other words, the through rate from the foreign port to the interior points of the United States could always be kept higher than to the interior shorter haul. The Liverpool rate could be kept higher than the rates from Philadelphia which is as it is now under the long-and-short-haul clause between Philadelphia and all interior points in the west.

Freight is taken from Savannah, Georgia, by boat to Baltimore for the west, say to Chicago. The Pennsylvania Railroad does not charge on that business from Baltimore to Chicago the same that it charges locally from Baltimore.

Since the order made by the Commission of March 23, 1889, the steamship connections of the Grand Trunk Railway have reduced the rate on imported traffic.

The same witness last mentioned gave this illustration of his view in regard to this through rate: Suppose we had a shipment from Trenton to Chicago at 30 cents per hundred pounds for queen's ware; say the ocean rate from the other side is 20 cents—that would make the through rate 50 cents as against 30 cents from Trenton. Now if the railroad company and the steamship lines should make a rate of 45 cents through it would not be a discrimination as against Trenton under these circumstances.

The practice of the Baltimore & Ohio Railroad Company, so far as import traffic from Europe is concerned, has been to bring enough heavy traffic in the steamers from Europe to get them into Baltimore for export business from Baltimore. The road, however, takes import business from New York and also from Philadelphia. The road gets 95 per cent. of its import business *via* Baltimore, and connects with five or six

regular lines of steamers plying to that port, namely: the Allan line from Liverpool, the Johnston from Liverpool, the Johnston Line from London, the Furness Lines from Antwerp, and what is known as the Dreassle Line from Rotterdam and Amsterdam.

The import freight carried by the road is very heavy, coarse goods from Liverpool, London and Glasgow. It is principally cement, crockery, earth paints and chemicals, and some iron ore. From the continent there is considerable of what is called "measurement goods;" that is, high-class goods. From 80 to 85 per cent. of this freight comes on through bills of lading. The arrangement the road has made with the steamship lines for the division of the through rate is as follows: The road demands an arbitrary on the business, as a rule, that will not give it less than, 15 cents per hundred pounds to Chicago. It is at times prorated with the steamships, but the best prorate that it has ever given to the vessels is on the basis of 60 per cent. for the inland and 40 per cent. for the ocean rate. The competition which this road meets, especially on Liverpool business—which is the great point of competition in Europe—to interior points is by the Canadian lines, by the Erie Canal and by the Mississippi River. The general traffic manager of the Baltimore & Ohio Railroad Company testified before the Commission that, in his opinion, the rate by canal and lake from New York to Chicago given on this heavy traffic is the yard-stick by which all rates are measured and must be measured, between the seaboard and Chicago. The route the road comes in competition with at St. Louis and Kansas City is the route made up the Mississippi River by what is known as the barge line. The Canadian lines are the factors in making rates out of Liverpool. They have the largest number of competing lines.

From the Treasury Department Reports of Commerce and Navigation of the United States it appears that all the imports amount to $745,000,000, and the exports, $743,000,000. The tonnage cannot be arrived at unless by going through and compiling it on every article, which would be an interminable job. At Baltimore the exports are very much

heavier than the imports—probably quadruple. In money, Baltimore imports are about $15,000,000 worth; her exports are about $51,000,000 worth. New York imports are 63 per cent. of all the traffic that comes into the United States, and its exports are only about 43 per cent. In percentage, based on dollars, Baltimore brings in imports about 2 per cent.; its exports are about 8 per cent. of the total of the United States.

New York is above every other point for shipping. In the first place, the balance of exchange, the affiliations of the owners of vessels with branch houses in New York, the rapidity with which they can obtain a cargo, and the fact that so much traffic is bound to go to New York—this all makes New York the prime point for vessel tonnage from foreign ports. A vessel comes into New York with a lot of traffic to go through to Chicago; the canal boat comes alongside the vessel and takes in that traffic; then it goes to Buffalo and discharges into an Erie or New York Central steamship owned and controlled by one of those lines, and it goes through to Canada, beating the all-rail rate or the lake and rail anywhere from one to three dollars per ton, according to the sworn testimony of the general traffic manager of the Baltimore & Ohio Railroad.

The same witness testified that out of an invoice of three or four hundred cases of imported goods to New York only 25 or 30 cases were carried on to Chicago; the rest were jobbed in New York. The importers always want the option of the New York market, and there is hardly any inducement that can be offered them that can carry dry goods through any other port than the port of New York.

The Baltimore & Ohio Railroad Company, as a general rule, makes divisions as above stated with the steamship lines on the basis of 60 per cent. for the road and 40 per cent. for the steamer. But if that division carried the road below what it thought was a fair minimum rate for the road, and it can bring the steamship down lower, it would not prorate.

The rates of the Baltimore & Ohio Railroad are about the same with all steamer lines, but there are regular lines of

steamers that the road confers with and works with closer than outsiders. Those regular lines are the Bremen Line, the Allan Line, and the Johnston Line. They are all authorized to make through rates and give through bills of lading, provided they agree to the minimum charged by the road. If the road were required to charge the full inland rate on everything coming to the port of Baltimore it would simply have to go out of the import business.

The most interior points to which the Baltimore & Ohio Railroad makes through rates are St. Louis and points between St. Louis and Chicago, though very little to any of the latter points. The export and import business at Missouri River points is not a subject of competition between the ports of Baltimore and New Orleans. That business goes to New Orleans whenever the river wants it. It takes it upon a set of barges that brings that traffic up the river at an exceedingly low rate. The steamers take goods frequently on what they call "measurement," because they can make more money out of it than by taking by weight. But the inland proportion of the road is calculated on the weight.

The road gets on through rates on imported goods from Baltimore to Chicago 15 cents per hundred pounds, and where the road gets this 15 cents the through rate runs from 20 to 24 cents per hundred pounds.

The relative distances to New York, Philadelphia, Baltimore and New Orleans from French, German and English ports are as follows: Boston has the shortest line, there is very little difference between New York and Philadelphia; Baltimore is about a day or a day and a half longer; and New Orleans is the longest route of all.

The general traffic manager of the Baltimore & Ohio Railroad Company further testified before the Commission that since the Interstate Commerce law went into effect the import traffic through the different ports has been maintained as he thinks with better through rates from Europe than before. The rate from Liverpool to Chicago is certainly as high, if not higher, than before the Interstate Commerce law was enacted. Since said law went into effect Baltimore has hardly held her own as to imports; certainly they have not increased; but

she may have increased in exports. The regular inland tariff rates from New York, Baltimore and Philadelphia to interior centers like Chicago are at all times on the lower classes of goods as low as they can be carried at a profit; and take the average of the medium and high class goods the same is the case. On that class of goods on which the Baltimore & Ohio Railroad gets 15 cents out of the through rate to Chicago, the inland tariff rate is 22 cents. The through rates are made to Chicago, St. Louis and interior points, and, if necessary, to intermediate points. All the traffic the road handles on through bills of lading is in carload lots. The road seldom has a through bill of lading for less than fifty tons. Usually the joint tariffs between the road and the steamship lines are made verbally from day to day. There are no lists filed with the Commission.

Cincinnati is the southern outlet of the Baltimore & Ohio Railroad, and this road does no work on a through bill of lading south of the Ohio River; it has traffic south of that river, but gives a bill of lading only to Cincinnati. The witness knows no manufacturers who complain of being discriminated against by this through bill of lading. As a rule the road brings mostly raw material, which really goes to the manufacturers.

The Chicago & Grand Trunk Railway is an affiliated line practically controlled by the Grand Trunk Railway Company. It has a separate organization, separate capital and separate management, but is still under the same control, officered by the same persons, except the president and vice-president.

The Grand Trunk Railway of Canada extends to Portland, in Maine, as well as to Montreal, in Canada. Portland is entirely dependent upon the Grand Trunk for its ocean steamship service. It has no other, and that only during the winter season. Montreal business opens in the summer season from May to November.

The Grand Trunk Railway of Canada has had relations with Messrs. Allan since 1857 and they have been based upon the percentage principle. The road takes the ups and downs upon that principle and experience has shown it to be a fair

method of doing the business. But when the Interstate Commerce law came into operation the road ceased to apply the percentage principle in respect to United States traffic, and after the last ruling of the Interstate Commerce Commission made it necessary to charge the same rate from the seaport upon European as upon all other traffic, the road issued a tariff which is applicable to everybody. The latest tariff is that of May, 1890, and is called No. D. G. 13 Interstate Tariff, and it took effect May 1, 1890. In 1889 the road commenced a tariff based upon 22 cents, sixth class, without any special commodity tariff attached to it. The ocean steamship connections stated they could get no traffic on that basis. The second tariff was on the basis of 20 cents per hundred pounds. Still the road was told no traffic could be obtained. The road then came down to a 13-cent tariff and that is the present basis for sixth class—for the coarser kinds of goods. Special commodity rates are made upon both domestic and import traffic to enable our steamers to carry a portion of the traffic.

The Grand Trunk Railway of Canada is a member of the Trunk Line Association, and there is a uniform classification of the Trunk Line Association and the Central Traffic Association, and these special commodity classifications in the tariff of May, 1890, are excepted articles from said classification. It appears that these commodity tariffs have never been submitted to the commissioner of the Trunk Line Association for his action.

The general freight traffic manager of the Grand Trunk Railway of Canada testified before the Commission that the articles in said special commodity classification are substantially sixth-class articles of the Trunk Line Classification, and if the principles of the classification were adhered to it would necessitate the introduction of all articles of substantially similar character. On articles embraced in said commodity tariff shipments have been mostly through. To a comparatively small extent the shipments have been made through Portland and Montreal to United States points. The steamship connections of the Grand Trunk Railway Company of Canada carried traffic mainly for Canadian

points, although Canadian traffic comes through American ports to a large extent. The Grand Trunk Railway Company of Canada carries some American traffic. During the last season about 2,500 tons of tin plate from Portland were carried by it. There are thirty points in the United States running from Chicago to St. Louis, Louisville, Indianapolis and Pittsburgh to which the reduced commodity tariff applies. On articles outside of the commodity tariff the rates are applied on a basis of 65 cents a hundred for first class. Thirteen cents on sixth class is the rate the road has now got down to under this commodity tariff. Before that rate, the rate on sixth class was 22 cents.

THE CONCLUSIONS AND OPINION OF THE COMMISSION.

The language of section 1 of the Act to regulate commerce provides for a specific regulation of the subject involved in this controversy that cannot be more clearly and intelligibly stated than by quoting the section itself. That section is as follows:

"That the provisions of this Act shall apply to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used, under a common control, management, or arrangement, for a continuous carriage or shipment from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, *or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country: Provided, however*, That the provisions of this Act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one State, and not shipped to or from a foreign country from or to any State or Territory as aforesaid."

So much of that portion of this section above quoted as refers to the subject of foreign commerce brought through a port of entry in the United States, or through a port of entry in a foreign country adjacent to the United States, in either

event destined to a place in the United States upon through bills of lading from the foreign port of shipment to the place of destination in the United States, is perhaps more readily comprehended if separately stated:

"That the provisions of this Act shall apply to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used, under a common control, management, or arrangement for a continuous carriage or shipment, . . . *or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country.*"

In opening the debate on the 14th day of April, 1886, and explaining the bill for the information of the United States Senate, the chairman of the Senate Select Committee, in discussing this subject, said:

"While the provisions of the bill are made to apply mainly to the regulation of interstate commerce, in order to regulate such commerce fairly and effectively it has been deemed necessary to extend its application also to certain classes of foreign commerce which are intimately intermingled with interstate commerce, such as shipments between the United States and adjacent countries by railroad, and the transportation by railroad of shipments between points in the United States and ports of transshipment or of entry, when such shipments are destined to or received from a foreign country on through bills of lading. To avoid any uncertainty as to the meaning of these provisions in regard to what may be at the same time, in some instances, state and foreign commerce, it is expressly provided that the bill shall not apply to the transportation of property wholly within one State and not destined to or received from a foreign country."

As bearing upon the construction of these provisions of the first section of the Act to regulate commerce relating to foreign commerce, it is significant that, after this explanation of this section thus made by the chairman of the Senate Select Committee, in all the subsequent debates that followed there seems to have been no difference of opinion in regard to it in either House of Congress, and it was enacted literally as reported by the Senate Select Committee. Congress was here in clear, intelligible and terse language defining the field of transportation to be regulated, as well as the carriers who were to be supervised in the administration of the statute. That part of this field relating to foreign commerce was the

transportation of this commerce between the port of entry and place of destination upon the through bill of lading, such place of destination being in the United States, and such port of entry being either in the United States or in a foreign country adjacent to the United States.

Congress did not undertake to regulate its transportation on the high seas, nor at the foreign ports of shipment, nor in the foreign country adjacent to the United States. But in the one instance, as soon as that commerce is brought through a port of entry in the United States upon a through bill of lading destined to a place in the United States, and is taken into the United States by a rail carrier or by a carrier part rail and part water, for transportation to its place of destination, it then comes within the jurisdiction of the Act to regulate commerce. And, in the other instance, when that commerce upon a through bill of lading destined to a place within the United States, comes through a port of entry in an adjacent foreign country, and is brought within the territorial jurisdiction of the United States, it then becomes subject to the regulation of the Act to regulate commerce. Several reasons are obviously manifest why this regulation was so provided by Congress in each of these instances. In the first place, it is the purpose of the Act that the carriage of such foreign freight from a port of entry in the United States to a place within the United States upon a through bill of lading shall not be left open and free from regulation, so that it may be given a preference in transportation over other traffic originating in the United States and destined for carriage to a place within the United States, or that one shipper or dealer may have a preference in rates or facilities in the carriage of such foreign merchandise over other dealers, in the carriage of their freight originating in the United States and carried to a place within the United States. In the next place, it is a purpose of the statute, equally clear as to the other class of foreign freight, that carriers bringing it from a port of entry in an adjacent foreign country to a place within the United States shall not be permitted to violate the provisions of the Act to regulate commerce as against consignees, dealers, and localities in the United States, nor as

against competing American carriers engaged in like business of transporting freight from a port of entry in the United States to a place of destination in the United States upon a through bill of lading. Other reasons might be named, but these are deemed sufficient for the purposes of this report and opinion. But in every such case the jurisdiction conferred by the statute, whether in the one or the other of these instances, legitimately extends the inquiry and scope of investigation to every device, way, or means by which any such violation is attempted or done.

The power of Congress to enact such legislation has always been deemed plenary, under the grant contained in section 8 of article I. of the Constitution of the United States, and requires no discussion now. Between the parties to this contention there is no difference of opinion that the importation of traffic on through bills of lading by continuous carriage—ship and rail—from the ports of Europe or other foreign countries to points within the United States is a transportation the regulation of which is provided for by the Act to regulate commerce. The differences between them indicated in this contention relate to the methods of such regulation, the extent of that regulation and the operation of the statute in regard to it.

There are various features of this business as done that place it upon very peculiar grounds. It appears that the business itself has been done by the carriers engaged in it for a period of about eight years. The principal articles imported are teas, tin plate, soda caustic, wines and liquors, and a list of general merchandise which in itself is not large. The business itself is not a very large one, though it has increased considerably during the period since it commenced, and is of sufficient amount to make it an object to American rail carriers to obtain the revenue from it if they can.

On the 23d of March, 1889, the Commission, by a general order of that date, issued to the carriers engaged in interstate commerce and subject to the provisions of the statute, which, amongst other things, directed that—

"Imported traffic transported to any place in the United States from a port of entry or place of reception, whether in this country or in an adjacent foreign country, is required to be taken on the inland tariff covering other freights."

The statement of the pleadings and the material facts found in the present proceeding show by what carriers this order has been obeyed and by which of them it has not been obeyed, and upon what grounds these last justify their action in this respect. A repetition of the names of these carriers in each instance is unnecessary, as this has been shown in a foregoing part of this report. That general order was not made upon any contention of parties, in which the Commission had the benefit of all the evidence now adduced in this controversy, or of the light thrown upon the subject by the discussions of able and experienced counsel, but the Commission, from serious consideration then and before that time given to this subject, was informed that there were a few of the interstate carriers who did this kind of business, though upon a very small scale compared to their whole business. That order also embraced other important subjects besides this of import rates. After that order was made and published by the Commission for the information and guidance of the carriers, shippers and dealers, it was supposed by the Commission that if any of the carriers found that the order was one which injured them in that business, or that it operated to the detriment of importers, or that, on the other hand, it was not observed by the carriers, to the injury of domestic producers and dealers, in either event complaint would be made to the Commission by the one or the other of these several classes for a modification of the order. But no such complaint has been made until that which is presented in this proceeding.

In consequence of the constant and frequent fluctuation of ocean rates, and the fact that shipments of this kind are neither large nor regular from foreign countries, except it be teas from Japan and China, and tin plate, it has been found to be the experience of carriers engaged in it that joint tariffs between the steamships and the rail carriers, framed, published, and maintained as required by the provisions of the

Act to regulate commerce, have, up to this time, been found to be impossible in the nature of things. The port of entry at which the nearest approach in some respects to a tariff meeting the requirements of the Act to regulate commerce has been in force, has been at New Orleans between the rail line of the Southern Pacific Company and its steamship connections. We refer here, of course, to those carriers not complying with the Act. But even in this instance, the general traffic manager of that company candidly admitted in testifying before the Commission that if it was discovered that any important change was rendered necessary in the joint tariff of that company and its steamship connections in regard to the rates for freight upon any articles, that the change was made at once by the general freight agent of his company at New Orleans and the agent of the steamship company at that port, and put into immediate effect without giving the notice required by the statute, and that they could not do the business any other way. The Southern Pacific Company filed the joint tariffs of that company and its steamship connections engaged in this carrying trade with the Interstate Commerce Commission, but changes in these joint tariffs were made in the manner above indicated and then reported to the Commission. Besides, greatly lower rates are charged by this company on foreign merchandise from the port of entry to the point of destination in the United States than upon like traffic under its inland tariff between these same points. In the case of the Louisville, New Orleans & Texas Railway Company the tariffs are not made up except upon each consignment and not reported to the Commission until after the consignment has become known to the railroad company. Joint tarffs of other railway companies engaged in this business, if such exist, have not been filed with the Commission as provided by the statute. The excuse made for this has been, as already stated, the impracticability of making and maintaining and publishing joint tariffs as is required by the statute in the publication, maintenance and filing of these with the Commission. It seems that the method adopted by rail carriers engaged in this business has been, with the exception of the Southern

Pacific Company, that the rates are made absolutely by the agents of the steamship company in foreign countries, and the railway carriers accept them, whatever they may be. The entire transportation rate between vessel and rail carriers is divided between them upon certain agreed proportions in all this business.

One of the most important features of the Act to regulate commerce is the provisions of that statute for the publicity of rates and the maintenance of them as required by it. In the case of imported traffic it appears that these features of the statute would, as to the business shown to be done in this case, be in many vital respects impossible of application. A place at which it would seem that joint rates made under the requirements of the Act to regulate commerce should always be published for the information of shippers, would be at the place of origin of the freight, in order that shippers might know what the rates were. It appears from the evidence in this case that this can not be done in the foreign ports on account of the rapid fluctuation of rates, and that it would be destructive of the competition which prevails in making them at those ports. And, besides, there is no law that requires it at such foreign ports.

The provisions of the statute relating to the carriage of passengers or freight over continuous lines or routes operated by more than one common carrier require that copies of joint tariffs of rates or fares, or charges for such continuous routes, shall be filed with the Commission. The Commission has no power to suspend the provisions of the statute relating to this or to the manner in which advances and reductions shall be made in them and reported to the Commission. In these respects the statute is inexorable. In section 6, amongst other things, it is provided that—

"Every common carrier subject to the provisions of this Act shall file with the Commission hereinafter provided for copies of its schedules of rates, fares and charges which have been established and published in compliance with the requirements of this section, and shall promptly notify said Commission of all changes made in the same. Every such common carrier shall also file with said Commission copies of all contracts, agreements or arrangements with other common carriers in relation to any traffic affected by the provisions of this Act to which it may be a party. And in cases

where passengers and freight pass over continuous lines or routes operated by more than one common carrier, and the several common carriers operating such lines or routes establish joint tariffs of rates or fares or charges for such continuous lines or routes, copies of such joint tariffs shall also, in like manner, be filed with said Commission. Such joint rates, fares and charges on such continuous lines so filed as aforesaid shall be made public by such common carriers when directed by said Commission, in so far as may, in the judgment of the Commission, be deemed practicable; and said Commission shall from time to time prescribe the measure of publicity which shall be given to such rates, fares and charges, or to such part of them as it may deem it practicable for such common carriers to publish, and the places in which they shall be published."

And further that—

"No advance shall be made in joint rates, fares and charges shown upon joint tariffs, except after ten days' notice to the Commission which shall plainly state the changes proposed to be made in the schedule then in force, and the time when the increased rates, fares or charges will go into effect. No reduction shall be made in joint rates, fares and charges, except after three days' notice, to be given to the Commission as is above provided in the case of an advance of joint rates. The Commission may make public such proposed advances, or such reductions, in such manner as may, in its judgment, be deemed practicable, and may prescribe from time to time the measure of publicity which common carriers shall give to advances or reductions in joint tariffs."

And in addition to this, that—

"It shall be unlawful for any common carrier, party to any joint tariff, to charge, demand, collect or receive from any person or persons a greater or less compensation for the transportation of persons or property, or for any services in connection therewith, between any points as to which a joint rate, fare or charge is named thereon, than is specified in the schedule filed with the Commission in force at the time."

And again that—

"If any such common carrier shall neglect or refuse to file or publish its schedules or tariffs of rates, fares and charges as provided in this section, or any part of the same, such common carrier shall, in addition to other penalties herein prescribed, be subject to a writ of *mandamus*, to be issued by any circuit court of the United States in the judicial district wherein the principal office of said common carrier is situated, or wherein such offense may be committed, and, if such common carrier be a foreign corporation, in the judicial circuit wherein such common carrier accepts traffic and has an agent to perform such service, to compel compliance with the aforesaid provisions of this section; and such writ shall issue in the name of the people of the United States, at the relation of the Commissioners appointed under the

provisions of this Act; and the failure to comply with its requirements shall be punishable as and for a contempt; and the said Commissioners, as complainants, may also apply, in any such circuit court of the United States, for a writ of injunction against such common carrier, to restrain such common carrier from receiving or transporting property among the several States and Territories of the United States, *or between the United States and adjacent foreign countries, or between ports of transshipment and of entry and the several States and Territories of the United States, as mentioned in the first section of this Act, until such common carrier shall have complied with the aforesaid provisions of this section of this Act.*"

The power with which the Commission is clothed by this section "from time to time to prescribe the measure of publicity which shall be given to such rates, fares and charges, or to such part of them as it may deem it practicable for such common carriers to publish, and the places in which they shall be published," was first exercised by the Commission in a general order directed to the carriers dated June 21st, 1887, as follows:

"Joint tariffs of rates, fares or charges, established by two or more common carriers for the transportation of passengers or freight passing over continuous lines or routes, copies of which are required by the sixth section of the 'Act to regulate commerce' to be filed with the Commission, shall be made public so far as the same relate to business between points which are connected by the line of any single common carrier required by the first paragraph of said section to make public schedules of its rates, fares and charges. Such joint tariffs shall be so published by plainly printing the same in large type of at least the size of ordinary 'pica,' copies of which shall be kept for the use of the public in such places and in such form that they can be conveniently inspected, at every depot or station upon the line of the carriers uniting in such joint tariff where any business is transacted in competition with the business of a carrier whose schedules are required by law to be made public as aforesaid."

And subsequently, as to the publication of such joint tariffs and of advances and reductions in such joint tariffs, the Commission made an order as recited in its order of March 23, 1889, to the effect that—

"All advances and reductions in joint rates, fares and charges shown upon joint tariffs established by common carriers subject to the provisions of the Act to regulate commerce shall be made public.

"Every such advance or reduction shall be so published by plainly printing the same in large type, two copies of which shall be posted for the use

of the public in two public and conspicuous places in every depot, station or office of such carrier where passengers or freight, respectively, are received for transportation under such schedules, in such form that they shall be accessible to the public and can be conveniently inspected. Such schedules shall be so posted ten days prior to the taking effect of any such advance and three days prior to the taking effect of any such reduction in joint rates, fares and charges."

The publication of such inland joint tariffs for the transportation of such foreign merchandise under the statute and of advances and reductions should be made at the port of entry and also at the point of destination of freight in the United States by posting the same in a public place at the depot of the carrier where the freight is received in the port of entry and where it is delivered at the place of destination in the United States.

In the case of all the various articles that are the subject of import, the basis of division between the rail and water carriers, which will be seen in some respects to vary between the different carriers, will be found stated in the preceding part of this report and opinion, and it is not necessary nor material to repeat them here.

In every instance of those carriers not complying with the order of the Commission of March 23d, 1889, it will be observed that the inland proportion of the through rate charged by the rail carrier on this imported traffic is largely less than the rate charged by it on other freight carried by it under the inland tariff over the same line from the port of entry to the place of destination in the United States. The rail carriers defend this on the ground that the rates are made in foreign countries under circumstances and conditions of competition that are wholly dissimilar to those surrounding the rates upon articles of domestic manufacture in the United States; and further, that in this case, as in the case of other through rates upon property, if transported from one place in the United States to another, the percentages of the through rates between points along the line may well be justly lower than the local rates between the same points, and therefore that this principle should govern as to the inland or rail proportion of the through transportation rate on imported traffic between the port of entry and the

place to which the freight is carried by the rail carrier in the United States. But the statute has made the two cases clearly distinguishable.

The Statute has provided for the regulation of interstate traffic by interstate carriers, partly by rail and partly by water or all rail, shipped from one point in the United States to another destination within the United States, or from a point of shipment in the United States to a port of entry within the United States or an adjacent foreign country, or from a port of entry either within the United States or in an adjacent foreign country, on import traffic brought to such port of entry, from a foreign port of shipment and destined to a place within the United States. In providing for this regulation the Statute has also provided for the methods of such regulation by publication of tariffs of rates and charges at points where the freight is received and at which it is delivered, and also for taking into consideration the circumstances and conditions surrounding the transportation of the property. The Statute has undertaken no such regulation from foreign ports of shipment to ports of entry either within the United States or to ports of entry in an adjacent foreign country, and as between these ports has provided for no publication of tariffs of rates and charges, but has left it to the unrestrained competition of ocean carriers and all the circumstances and conditions surrounding it. These circumstances and conditions are indeed widely different in many respects from the circumstances and conditions surrounding the carriage of domestic interstate traffic between the States of the American Union by rail carriers; but as the regulation provided for by the Act to regulate commerce does not undertake to regulate or govern them, they cannot be held to constitute reasons in themselves why imported freight brought to a port of entry of the United States or a port of entry of an adjacent foreign country destined to a place within the United States should be carried at a lower rate than domestic traffic from such ports of entry respectively to the places of destination in the United States over the same line and in the same direction. To hold otherwise would be for the Commission to create exceptions to the operation of the

Statute not found in the Statute; and no other power but Congress can create such exceptions in the exercise of legislative authority.

In the one case the freight is transported from a point of origin in the United States to a destination within the United States, or port of transshipment, if it be intended for export, upon open published rates, which must be reasonable and just, not unjustly preferential to one kind of traffic over another, and relatively fair and just as between localities; and the circumstances and conditions surrounding and involved in the transportation of the freight are in a very high degree material. In the other case the freight originates in a foreign country, its carriage is commenced from a foreign port, it is carried upon rates that are not open and published, but are secret, and in making these rates it is wholly immaterial to the parties making them whether they are reasonable and just or not, so they take the freight and beat a rival, and it is equally immaterial to them whether they unjustly discriminate against surrounding or rival localities in such foreign country or not. Imported foreign merchandise has all the benefit and advantage of rates thus made in the foreign ports; it also has all the benefit and advantage of the low rates made in the ocean carriage arising from the peculiar circumstances and conditions under which that is done; but when it reaches a port of entry of the United States, or a port of entry of a foreign country adjacent to the United States, in either event upon a through bill of lading, destined to a place in the United States, then its carriage from such port of entry to its place of destination in the United States under the operation of the Act to regulate commerce must be under the inland tariff from such port of entry to such place of destination covering other like kind of traffic in the elements of bulk, weight, value, and of carriage; and no unjust preference must be given to it in carriage or facilities of carriage over other freight. In such case all the circumstances and conditions that have surrounded its rates and carriage from the foreign port to the port of entry have had their full weight and operation, and in its carriage from the port of entry to the place of its destination in the United States, the

mere fact that it is foreign merchandise thus brought from a foreign port is not a circumstance or condition under the operation of the Act to regulate commerce which entitles it to lower rates or any other preference in facilities and carriage over home merchandise or other traffic of a like kind carried by the inland carrier from the port of entry to the place of destination in the United States for the same distance and over the same line.

The term "a like kind of traffic," as found in section 2 of the Act to regulate commerce, and as used in this report and opinion, does not mean traffic that is identical, but it means traffic that is of "a like kind" with other freight in the elements of a fair and just classification for the purpose of arriving at a just and reasonable rate and a rate that will avoid unjust discrimination and unlawful preference. The words "service rendered" and "a like and contemporaneous service," and "under substantially similar circumstances and conditions," as these occur in that section, together with the method of classification of freights as it is done by the railroads, which is recognized in the sixth section of the statute, all point to this construction. Each of these are controlling and important words of the Statute used in immediate connection with the subject of transportation and cannot be overlooked in arriving at the meaning of the Statute.

The first clause of the 3d section of the Act to regulate commerce also contains provisions bearing with more or less force upon the several questions involved in this proceeding. Its language is as follows:

"That it shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

One paramount purpose of the Act to regulate commerce, manifest in all its provisions, is to give to all dealers and shippers the same rates for similar services rendered by the carrier in transporting similar freight over its line. Now, it

is apparent from the evidence in this case, that many American manufacturers, dealers and localities, in almost every line of manufacture and business, are the competitors of foreign manufacturers, dealers and localities, for supplying the wants of American consumers at interior places in the United States, and that under domestic bills of lading they seek to require from American carriers like service as their foreign competitors in order to place their manufactured goods, property and merchandise with interior consumers. The Act to regulate commerce secures them this right. To deprive them of it by any course of transportation business or device is to violate the Statute. Such a deprivation would be so obviously unjust as to shock the general sense of justice of all the people of the country except the few who would receive the immediate and direct benefit of it.

On the 10th of August, 1888, the Parliament of Great Britain enacted a statute known as 51 and 52 Victoria, chapter 25, entitled "An Act for the Better Regulation of Railway and Canal Traffic, and for Other Purposes," in which, amongst other things, it was provided "that no railway company shall make, nor shall the court or the commissioners sanction any difference in the tolls, rates or charges made for, or any difference in the treatment of, home and foreign merchandise in respect to the same or similar service." The Act to regulate commerce will be examined in vain to find any intimation that there shall be any difference made in the tolls, rates, or charges for, or any difference in the treatment of home and foreign merchandise in respect to the same or similar service rendered in the transportation when this transportation is done under the operation of this statute. Certainly it would require a proviso or exception plainly engrafted upon the face of the Act to regulate commerce before any tribunal charged with its administration would be authorized to decide or hold that foreign merchandise was entitled to any preference in tolls, rates, or charges made for, or any difference in its treatment for, the same or similar service as against home merchandise. Foreign and home merchandise, therefore, under the operation of this statute,

when handled and transported by interstate carriers, engaged in carriage in the United States, stand exactly upon the same basis of equality as to tolls, rates, charges and treatment for similar services rendered.

The business complained of in this proceeding is done in the shipment of foreign merchandise from foreign ports through ports of entry of the United States, or through ports of entry in a foreign country adjacent to the United States, to points of destination in the United States, upon through bills of lading; and hence, in our construction of the Statute and discussion of the questions involved, we have endeavored to keep prominent the facts shown by the evidence, and in this way may have appeared to lay much stress upon the term "through bills of lading." But under our view of the Statute, the result would not be different if this business was done otherwise than upon through bills of lading.

There is a feature of this case relating to the original respondents, The Pennsylvania Railroad Company, The Pittsburgh, Fort Wayne & Chicago Railway Company, and the Pittsburgh, Cincinnati & St. Louis Railway Company, upon the facts, that is different from that of the other respondents and deserves to be separately noticed.

The contracts of the Pennsylvania Railroad Company and the International Navigation Company referred to in the complaint have been on file in the office of the Interstate Commerce Commission ever since the 14th day of April, 1887, and were so filed by the Pennsylvania Railroad Company. These were produced at the hearing of this proceeding and were put in evidence. The first of these is dated October 10, 1884, to continue in effect until January 1, 1891, after which it may be terminated upon one year's previous written notice by either party to the other of a desire that it shall end, at the expiration of which notice it shall cease and determine. The second of these is dated January 13, 1886, and is an amendment of the 3d and 9th sections of the original, and provides that it shall continue until July 1, 1891. The substance of this original and amended contract provides that the railroad company and the steamship company agree to "co-operate each with the other to secure and encourage

joint through traffic by issuing, at competitive rates, through bills of lading and through passenger tickets between Philadelphia and Liverpool and between New York and Liverpool, and between Philadelphia or New York and Antwerp, and by giving due publicity to said connection and facilities in their cards, handbills and advertisements; and each party shall in good faith exert itself through its agents to secure and promote such traffic. On all joint through freight and passenger traffic the parties hereto agree that they will charge and accept as low rates as they currently charge and obtain on like business between similar points, after deducting all rebates and allowances of every kind." It then provides for the establishment and use of piers, and for the loading, unloading and shifting of cars, and the prices that each is to receive for the services rendered in loading and unloading freight interchanged between them.

The 5th clause provides for what the railroad company shall receive for the transportation of freight and passengers transported by it to the steamship company or received by it from the steamship company, and is in these words:

"The railroad company agrees that in determining the railroad rates to and from Philadelphia which it shall receive on all interchanged freight traffic, they shall not exceed the aforesaid lowest rates currently charged and obtained to and from New York, after deducting from said lowest New York rates the current public agreed difference between New York and Philadelphia rates, which difference it is agreed under this contract shall not be rated less than the present difference of two cents per hundred pounds. In determining the rates on interchanged passenger business to and from Philadelphia which the railroad company shall receive, it is agreed they shall not exceed eighty per centum of the lowest rates currently received by the railroad company as its *pro rata* between Pittsburgh and New York on like business to and from New York."

The remaining provisions of the contract provide for the establishment of agencies to solicit business; how it shall be determined which is liable for loss or injury to property or passengers, the railroad company or the steamship company; that joint bills of lading shall be issued, mutually approved by the parties, and statements and particulars of joint traffic shall be submitted to each [illegible] accounts thereof

settled by the agents of the parties, and the balances found to be due by the parties respectively to each other shall be paid monthly to the party entitled to receive the same; and that in case of doubt, question, difference, cause of suit, all such matters shall be settled by arbitration in the manner provided by the contract.

At the date of the contract the Pennsylvania Railroad Company had a line from Pittsburgh to Philadelphia; and hence the allusion in the fifth section of the contract to rates currently received by the railroad company as its *pro rata* between Pittsburgh and New York on like business to and from New York.

It was so obvious that this contract did not establish the matters involved in this complaint that it was not even alluded to in the briefs or arguments of any or either of the counsel of any of the complainants, or in the briefs and arguments of any of the counsel for the respondents, between some of which respondents and the Pennsylvania Railroad Company considerable feeling was evinced in the course of the hearing. This contract provided for no aggregate through rate; it provided for no division of such aggregate through rate stating what percentage should be received by the railroad company and what percentage should be received by the steamship company. And as the through bills, copies of which were set out in the complaint, were all issued during the year 1888 and prior to the order of this Commission of March 23, 1889, and upon freights brought by the American Line of steamships to Philadelphia, the course was then taken to prove by the general freight agent of the Pennsylvania Railroad Company what the joint through rates had been and the manner in which these had been divided between the Pennsylvania Railroad Company and the other lines composing its system and the steamship companies, and it was proven by his evidence that a practice had existed between them of making these through rates upon percentage divisions with steamship lines generally at New York and Philadelphia by which the railroad company carried and imported freight over its own lines from the port of entry to destination at largely less than its inland rates upon similar

freight originating at Philadelphia or other ports of entry, but that this practice had been abandoned on the 30th day of September, 1889, according to previous notice given by him to that effect in December, 1888, and that since the 30th of September, 1889, all import traffic had been carried by the company at the same rates on its inland tariff for all other similar traffic from ports of entry to place of destination.

After all this, when the counsel for the New York Board of Trade and Transportation in his brief and argument, in compliance with a rule of practice of the Interstate Commerce Commission, submitted to the Commission "the findings of fact" which he proposed the Commission should find in this case, and referring to the Pennsylvania Railroad Company, the Pittsburgh, Fort Wayne & Chicago Railway Company and the Pittsburgh, Cincinnati & St. Louis Railway Company, he used this language: "The three latter roads ceased the practice on October 15, 1889, as they allege, and there is no proof to the contrary." It thus appeared in the proof without controversy that several months before this proceeding commenced these three defendants had abandoned this practice.

As a matter of fact it has been the well-known and established practice of this Commission in administering the provisions of the Act to regulate commerce, from the time of its organization, that, in cases where a carrier has abandoned a practice deemed unlawful or questionable prior to the commencement of proceedings against it, or at any time even before the hearing of such proceedings when commenced, and is obeying the law as construed by the Commission, the Commission will make no order against it to cease a practice which it had already abandoned, because such order would be vain and useless, and the Statute does not require it. In changing long-established methods of business, existing prior to the enactment of the Statute, in order to comply with its provisions on the part of carriers and their agents, it was seen by the Commission that things of this kind would occasionally occur, and the purpose of the Commission was to have the carriers in the course of administration conform their methods to the requirements of the Statute with as little

delay as possible, and work in harmony with its provisions for the welfare of the public as well as for their own good. See The Manufacturers and Jobbers Union of Mankato *v.* The Minneapolis & St. Louis Railway Company and others, 1 I. C. C. Rep. 227, 1 Inter. Com. Rep. 630; The Lincoln Board of Trade *v.* The Burlington & Missouri River Railroad Company in Nebraska and others, 2 I. C. C. Rep. 147, 2 Inters. Com. Rep. 95; Second Annual Report of the Interstate Commerce Commission; The Pennsylvania Company *v.* The Louisville, New Albany & Chicago Railway Company and others, 3 I. C. C. Rep. 223, 2 Inters. Com. Rep. 603; The Lincoln Board of Trade *v.* The Union Pacific Railway Company, 3 I. C. C. Rep. 221, 2 Inters. Com. Rep. 101; The American Wire Nail Company *v.* Queen and Crescent Fast Freight Line, 3 I. C. C. Rep. 224, 2 Inters. Com. Rep. 604; Rawson *v.* The Newport News & Mississippi Valley Company, 3 I. C. C. Rep. 266, 2 Inters. Com. Rep. 626; Holbrook *et al. v.* The St. Paul, Minneapolis & Manitoba R. R. Co., 1 I. C. C. Rep. 103, 1 Inters. Com. Rep. 323.

In such a case it has always been presumed by the Commission that the abandonment of the practice by the carrier was done in good faith and would be so considered until something to the contrary occurred. So well known were these rules of the Commission by the learned counsel for the complainants and respondents that, after the evidence was all in from which it appeared, amongst other things, that the Pennsylvania Railroad Company had abandoned this practice on the 30th of September, 1889, according to previous notice long given, and since that time had been complying with the order of the Commission of March 23, 1889, none of them insisted in any of their briefs and arguments that any order should now be made against it.

The method by which the Grand Trunk Railway Company of Canada complied with the order of the Commission above referred to of date March 23, 1889, was to select a few articles, all of which were imports, and to put them into what was called a "commodity class" at largely reduced rates, for example, from Montreal, Canada, and Portland, Maine, to Chicago, Illinois, and a large number of other United States points, over

their lines, and from Chicago and the same other United States points to Montreal and Portland. The following table will show a list of these articles, the classifications from which they were taken, the rates they bore in each of these classifications and the rates they now bear in the commodity class:

To Chicago. Articles.	Official Class'n	From Montreal. Class Rate.	From Montreal. Commodity Class Rate.	From Portland. Class Rate.	From Portland. Commodity Class Rate.
Bleach	6	22	13	22	13
Blooms	6	22	13	22	13
Billets	6	22	13	22	13
Brick	6	22	13	22	13
Cement	6	22	13	22	13
Clay	6	22	13	22	13
Galvanized iron	5	26	13	26	13
Granite, sandstone	5	26	13	26	13
Pig iron, scrap iron or steel, speigle iron	6	22	13	22	13
Puddled bars	6	22	13	22	13
Soda (ash and caustic)	6	22	13	22	13
Soda, silicate	6	22	13	22	13
Soda, bi-carbonate	4	31	13	31	13
Tin plate	5	26	13	26	13
Salt	6	22	13	22	13
Wire rods	5	26	13	26	13
Nail rods	5	26	13	26	13
Sheet lead	4	31	13	31	13
Whiting	6	22	13	22	13

The above table is made from the commodity tariff of the Grand Trunk Railway Company of Canada from Portland, taking effect November 25, 1889, and continuing in effect until May 26, 1890; and from tariff of the same company from Montreal, taking effect May 1, 1890, and continuing in effect until November 25, 1890.

The present classification of above articles has been practically in effect since April 1, 1887, except the commodity class rate, which was first put in effect by the Grand Trunk Railway Company of Canada in its tariff taking effect July 27, 1888, from Montreal to United States points. Afterwards, by the same company, it was put in effect from Portland to a large number of United States points, taking effect November 25, 1889. Again it was put into effect May 1, 1890, by the same company from Montreal to United States points hereinafter named. The Grand Trunk Railway Company has

been a member of the Trunk Line Association for more than ten years, and is still a member of that association. With the exception of the Grand Trunk Railway Company of Canada, the Trunk Line Association is made up exclusively of American rail carriers. In each of the above tariffs of the Grand Trunk Railway of Canada, and as part of each of them, the entire numbered classes, 1st, 2d, 3d, 4th, 5th, and 6th, of the current Trunk Line Classification and tariffs of rates to the United States points herein named, are also made parts of these tariffs, except as changed by the commodity class rates above stated.

The tariff of July 27, 1889, is made from Montreal to the following United States points:

Chicago, Ill.	Louisville, Ky.
Haskells, Ind.	Indianapolis, Ind.
Milwaukee, Wis.	Cincinnati, Ohio.
St. Paul, Minn.	Toledo, Ohio.
Minneapolis, Minn.	Jackson, Mich.
Grand Haven, Mich.	Detroit, Mich.
Grand Rapids, Mich.	Port Huron, Mich.
Ludington, Mich.	East Saginaw, Mich.
Muskegon, Mich.	Bay City, Mich.
East St. Louis, Ill.	Buffalo, N. Y.
St. Louis, Mo.	Pittsburgh, Pa.

The tariff of the Grand Trunk Railway Company of Canada taking effect November 25th, 1889, was from Portland to the following United States points:

Chicago, Ill.	Toledo, Ohio.
Haskells, Ind.	Jackson, Mich.
Milwaukee, Wis.	Detroit, Mich.
Grand Rapids, Mich.	Port Huron, Mich.
Grand Haven, Mich.	East Saginaw, Mich.
Ludington, Mich.	Bay City, Mich.
Muskegon, Mich.	Buffalo, N. Y.
East St. Louis, Ill.	Rouse's Point, N. Y.
St. Louis, Mo.	Fort Covington, N. Y.
Louisville, Ky.	Bombay, N. Y.
Indianapolis, Ind.	Helena, N. Y.
Cincinnati, Ohio.	Massena Springs, N. Y.

In order to appreciate how the tariffs are made and withdrawn and then made again, respectively from Portland, Maine, to United States points, and from Montreal, Canada, to United States points, it is necessary to remember that Portland, Maine, is the winter port at which the Grand Trunk Railway Company of Canada makes connection with the steamship lines, usually from during the month of November to during the month of May following; and Montreal, Canada, is the summer port at which the Grand Trunk Railway Company of Canada meets its steamship connecting lines, usually from during the month of May to during the month of November following.

This tariff of the Grand Trunk Railway Company of Canada, taking effect May 1, 1890, is upon shipments from Montreal to the following United States points:

Chicago, Ill.	St. Louis, Mo.
Haskells, Ind.	Louisville, Ky.
South Bend, Ind.	Indianapolis, Ind.
Milwaukee, Wis., *via* Grand Haven.	Cincinnati, Ohio.
	Toledo, Ohio.
Milwaukee, Wis., *via* Ludington.	Jackson, Mich.
	Detroit, Mich.
Milwaukee, Wis., all rail.	Port Huron, Mich.
St. Paul, Minn.	Battle Creek, Mich.
Minneapolis, Minn.	East Saginaw, Mich.
Grand Rapids, Mich.	Bay City, Mich.
Grand Haven, Mich.	Buffalo, N. Y.
Ludington, Mich.	Black Rock, N. Y.
Muskegon, Mich.	Suspension Bridge, N. Y.
East St. Louis, Ill.	Pittsburgh, Penn.

This commodity rate class tariff, with the other classes from which the above table has been compiled, was issued by the Grand Trunk Railway of Canada, to take effect May 1, 1890, and is numbered $\frac{D}{G\ 13}$ from Montreal, Canada, to Chicago, Ill., and twenty-five other named points in the United States. It expressly provides that "these rates are subject

to the Official Classification, except where otherwise provided for, and to the rules and regulations of carriage of the Grand Trunk Railway Company of Canada." The only exception provided by this tariff from the Trunk Line Classification and rates is the commodity class rate. It thus adopts and enforces the Trunk Line Classification and rates as its own classification tariff rates on all other traffic to all the above-named United States points except that named in this commodity class. It further provides that the special commodity rates will apply on shipments of the articles named in the commodity class in carloads of 24,000 pounds or over. The rates are the same from Portland, Maine, for example, to Chicago that they are from Montreal, Canada, to Chicago. The rates named in class 6 of the Trunk Line Classification applying to all the articles in that class are also based upon carload quantities of 24,000 pounds or more.

The effect of this commodity class is that upon the fourteen articles selected by it out of the sixth class and placed in its commodity class, the rate upon these fourteen articles, for example, from Portland to Chicago or from Chicago to Portland, or from Montreal to Chicago, or from Chicago to Montreal, is 13 cents per hundred pounds, while the several hundred articles with which these have been classed in the sixth class prior to and since the order of the Commission of March 23, 1889, and now, are charged 22 cents per hundred pounds for the same service in carrying them. The reduction made as to the few articles taken out of the fifth class, and the two articles taken out of the fourth class, will sufficiently appear by the figures in the above table. To the other twenty-five United States points, the respective rates, sixth class and commodity class are, more or less as the case may be, according to distance, but the differences between them are proportionately about the same as to Chicago.

It appears that it has long been a standing rule of the Trunk Line Association, of which the Grand Trunk Railway Company of Canada is a member, that all commodity classes shall be submitted to the Commissioner of the Trunk Line Association before being put out; but from some cause it appears that this was not done in the case of this commodity

class in the three tariffs of the Grand Trunk Railway of Canada taking effect July 27, 1889, November 25, 1889, and May 1, 1890. This circumstance is referred to only as showing the history of this commodity class rate and how it originated. The Grand Trunk Railway Company of Canada is an actively competing line with the American railway carriers, members of the Trunk Line Association, for the carriage of these imported articles and other articles with which they are classed in sixth class, from ports of entry to Chicago and other United States points named, and from Chicago and other United States points named to such ports of entry respectively. It is insisted by the Grand Trunk Railway Company that, inasmuch as it has the right to make its own tariffs and charge its own rates, it is no violation of law for it to do this; and that it did this in order to comply with the order of the Commission of the 23d of March, 1889, and to hold its import traffic business to ports of entry; and that it is a compliance with that order.

A large latitude must undoubtedly be allowed a carrier in framing its classifications and rates to meet the peculiar exigencies of business along its own line; and when we say exigencies, we mean the circumstances and conditions surrounding such business. But assuming, as a matter of fact, for the purposes of this opinion, upon all the evidence in this case, that the rates upon the several hundred articles named, for example, in sixth class, are just and reasonable—and certainly the Grand Trunk Railway Company would seem to be committed to this proposition, because it charges these rates upon these articles and so publishes them in its tariffs alongside these commodity class rates—we are then confronted with the further fact that this company has selected from that class a few enumerated articles, placed them in what is called a "commodity class," and largely reduced the rates upon them, and then we find the further fact that the articles thus selected by it are each and all articles of import traffic, and we are brought to another fact, that the Grand Trunk Railway Company of Canada did this in order to hold its import traffic and to have the inland rates upon the few articles named in its commodity class the same upon its in-

land tariffs from ports of entry to destination, whether these were carried as imports or as other traffic—the fact being that these commodity rate articles carried by it are imported traffic, and there being no carriage by it of the same articles under its commodity class rates which are not import traffic.

The Act to regulate commerce, amongst other things, distinctly provides in the second section that a preference of one kind of traffic over another of a like kind, and transferred under substantially similar circumstances and conditions and between the same points, over the same line, must not be given. And, again, the third section of the Statute provides that it shall be unlawful to make or give any undue or unreasonable preference to any particular description of traffic or to subject any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. In the case of Martin *v.* The Southern Pacific Company and others, 2 I. C. C. Rep. 1, 2 Inters. Com. Rep. 1, this Commission held that a violation of the fourth section of the Act can be accomplished by differences in classification as well as by differences in tariff rates. The Commission is strongly committed in various cases to the doctrine that unjust discrimination may be perpetrated by differences in classification just as well as in any other way. And it is equally true that unlawful preference or unlawful prejudice to a particular class of traffic or to a locality or to a shipper may be reached or may be accomplished by differences in classification as well as by any other method.

Now, here, as a matter of fact, this carrier, as the proof shows, arranged a method of complying with the order of the Commission of March 23, 1889, to the effect that certain articles of import traffic should be carried to destination from the port of entry and *vice versa* at the same rates upon the inland tariff. And it does this, not by taking all traffic of a like class with the import traffic and carrying all at the same rate, or indeed a considerable number of articles of that class, but it selects out of a large number of articles of the same class, a few of which are peculiarly the subject of import, places these in what is called a commodity class, makes very large reductions upon them, while it holds all other articles

of the same class transported over the same line and between the same points at the regular class rate, which is much higher. It had previously long shown, and it does not deny now, as its traffic manager testified in this proceeding, that according to the strict principles of classification the rates should be the same upon the articles it had put in the commodity class, that they are upon the large number of other articles in the sixth class. It had for many years always admitted and acted upon the rule in its business methods, up to July 27, 1889, November 25, 1889, and May 1, 1890, that the few articles selected by it and placed in the commodity class are articles of "a like kind of traffic" with those in the regular numbered class, whether it be sixth class, fifth class or the fourth class.

Very manifestly the purpose of the general order of March 23, 1889, was to prevent a preference being given in rates or otherwise to a particular class of freight against other freight of the same class. But if the articles selected and put into a separate class and transported at lower rates are published in tariffs, then that becomes a class of itself which the carrier has made, and the question arises whether the carrier may do this without its being a violation of that order or of the Statute; and this would seem to be the exercise of a right under the Statute which the carrier may do. This right of the carrier is one that is very broad and general. The fact that its exercise may be productive of cutting or lowering rates does not prove that it is a method of business to which the carrier may not resort in the exigencies of its business. It is a right the denial of which would affect vitally every interstate carrier in the land, as well as the public they serve.

It is very true that articles classified alike are presumptively entitled to equal rates, and if a difference is made by a carrier it assumes the burden of sustaining it by satisfactory evidence. See McMorran *et al. v.* The Grand Trunk Railway Company of Canada *et al.*, 3 I. C. C. Rep. 252, 2 Inters. Com. Rep. 604. But that rule assumes that the articles are in the same class. Here the carrier has made two separate and distinct classes, and therefore that rule has no application.

It may well be said, for it is plainly apparent, that such a

method as has been here described is well calculated to precipitate "a war of rates" between the Grand Trunk Railway of Canada and its rival competing American lines, with all the frauds and injury to the carriers and the public which we have so often described as resulting from such "a war of rates." But this does not take away from the Grand Trunk Railway of Canada the right to make separate classes for its traffic as it has here done.

The manner in which the Canadian Pacific Railway Company complied with the order of the Commission above referred to of date March 23, 1889, was in substance the same as the method adopted by the Grand Trunk Railway Company of Canada, which has already been stated at length and need not be here repeated. The tariff of this company No. 6, taking effect May 10, 1889, shows the rates in effect from Montreal to certain United States points on the 3d day of December, 1889, when the complaint in this proceeding was filed. The tariff of this company taking effect May 1, 1890, shows the rates in effect from Montreal to certain United States points at the time this complaint was heard in the month of June, 1890. The following table will show these rates respectively at the dates named when the complaint was filed and the proceeding was heard under the special rate, which is the same as the commodity rate of the Grand Trunk Railway Company of Canada, and also the rate upon these articles as fourth, fifth and sixth class, respectively:

Canadian Pacific Company—Montreal to Chicago.

Articles.	Official Classification.	Rates in effect on Dec. 3, 1889. Tariff No. 6 of May 10, 1889.		Rates in effect June, 1890. Tariff No. 117, May 1, 1890.	
		Class Rate.	Spec'l Rate.	Class Rate.	Spec'l Rate.
Bleech	6	22	20	22	18
Blooms	6	22	20	22	18
Billets	6	22	20	22	18
Brick	6	22	20	22	18
Cement	6	22	20	22	18
Clay	6	22	20	22	18
Earthenware in crates	5	26	20	26	18
Galvanized iron	5	26	20	26	18
Granite and sandstone	5	26	20	26	18
Pig iron	6	22	20	22	18
Scrap iron	6	22	20	22	18

Steel iron	6	22	20	22	13
Speigle iron	6	22	20	22	13
Puddled bars	6	22	20	22	13
Soda ash, caustic, silicate	6	22	20	22	13
" bicarb., crystals	4	31	20	31	13
Tin plate	5	26	20	26	13
Canada plate	5	26	20	26	13
Salt	6	22	20	22	13
Wire rods	5	26	20	26	13
Nail rods	5	26	20	26	13
Sheet lead	4	31	20	31	13
Whiting	6	22	20	22	13
Window glass, common	5	—	—	26	13

Each of these tariffs published also as part of such tariffs, respectively, the class rates numbered 1, 2, 3, 4, 5 and 6 of the Trunk Line Classification, applying to the same United States points, to which is added the "special" class rates above referred to.

On the tariff of May 1, 1889, there is the following notation:

"To apply on import traffic from European ports, delivered to the Canadian Pacific Railway by ocean vessels on the wharves at Montreal for furtherance to United States points as designated within. Freight received from steam or sailing ship lines at Montreal for United States points will be subject to the following conditions: Rates shown in this tariff are subject to the Official Classification No. 5 or subsequent issues, with the exceptions as noted, and to the rules and regulations of transportation adopted by the Canadian Pacific Railway Company."

At the bottom of this tariff and as part of it is the following notation:

"Above special column rates will apply only on the following commodities:

Bleach,
Blooms,
Billets,
Brick,
Cement,
Clay,
Earthenware in crates,
Galvanized iron,
Granite and sandstone,
Pig iron,
Scrap iron,
Steel iron,
Speigle iron,
Puddled bars,
Soda, ash, caustic, silicate, bicarb., crystals,
Tin plate,
Canada plate,
Salt,
Wire rods,
Nail rods,
Sheet lead,
Whiting.

The exception noted to the Official Classification of the Trunk Line Association is the "special" class rate.

The following table will show the United States points to which this tariff relates on freight carried from Montreal, Canada:

Buffalo, New York.	Chicago, Illinois.
Detroit, Michigan.	Milwaukee, Wisconsin.
Toledo, Ohio.	Grand Rapids, Michigan.
Cleveland, Ohio.	East St. Louis, Illinois.
Cincinnati, Ohio.	St. Louis, Missouri.
Indianapolis, Indiana.	St. Paul and Minneapolis, Minnesota.
Bay City, Michigan.	
Louisville, Kentucky.	Duluth, Minnesota.

The tariff of this company, taking effect May 1, 1890, contains the following announcements:

"To apply on import traffic from European ports, delivered to the Canadian Pacific Railway by ocean vessels."

And again—

"Freights received from steam or sailing ship lines at Montreal for United States points will be transported subject to the following conditions:

"Rates shown in this tariff are subject to the current Official Classification, with exceptions as noted and to the rules and regulations of transportation adopted by the Canadian Pacific Railway Company.

Again the exception noted is the "special" class rate upon substantially the same articles and gotten up in substantially the same manner as in the tariff taking effect May 10, 1889. On this tariff taking effect May 1, 1890, is the following notation:

"During the season of navigation the within rates will govern on local business from Montreal and points west in a direct line."

The reference to "season of navigation" in this notation is understood to apply to navigation on the St. Lawrence River and by the canals and lakes during the season that these are open for navigation.

The following table will show the United States points to which this tariff taking effect May 1, 1890, applies:

Buffalo, New York.
Black Rock, New York.
Suspension Bridge, New York.
Detroit, Michigan.
Toledo, Ohio.
Cleveland, Ohio.
Cincinnati, Ohio.
Jackson, Michigan.
Indianapolis, Indiana.
Battle Creek, Michigan.
Chicago, Illinois.
Milwaukee, Wisconsin.
Grand Rapids, Michigan.
South Bend, Indiana.
Bay City, Michigan.
East Saginaw, Michigan.
Louisville, Kentucky.
St. Paul, Minnesota.
Minneapolis, Minnesota.
Duluth, Minnesota.
West Duluth and intermediate points on through line west of Sault Sainte Marie.
St. Louis, Missouri.
West Superior, Wisconsin.

This tariff taking effect May 1, 1890, sets out as part thereof rates embracing the first second, third, fourth, fifth and sixth numbered classes of the Trunk Line Official Classification, to which is added a column of special rates. By the tariffs of the Grand Trunk Railway Company of Canada these "special" rates are called "commodity" rates, and by the tariffs of the Canadian Pacific Railway Company they are called "special" rates.

All that has been said in reference to the Grand Trunk Railway Company of Canada in selecting a few enumerated articles which are the subject of import, putting them in a commodity class rate at greatly reduced rates, and leaving a very large number of other articles of the class from which these few articles were selected at much higher rates in the sixth class of the Canadian Pacific Railway Company, applies with equal force to the course pursued by the Canadian Pacific Railway Company in its efforts to comply with the order of the Commission of March 23, 1889, and is governed by the same principles which allow the carrier to make different classifications to meet the circumstances and conditions surrounding the transportation of its traffic.

It will be seen, from what has been here said, that the Commission is of the opinion that "commodity" or "special" rates are not in themselves violations of the Statute neces-

sarily. Like numbered class tariffs, they have to be scrutinized and considered with reference to the rates they charge, the traffic upon which it is charged and the relations they bear to the tariffs upon other similar articles, and the circumstances and conditions under which the "commodity" tariff rate or "special" rate is made. These "commodity" tariffs may be said to be always exceptional and "special." Carriers, as a rule, have a regular numbered classification in their tariffs for nearly all of the different articles of transportation. Commodity rates, as a rule, are lower than numbered class rates, and are made upon coarse, cheap articles, more usually than otherwise between interior points. For example, they are made upon iron articles; upon cheap articles, like peas from Norfolk to Chicago, or upon crushed oyster shells from Baltimore to Pittsburgh, and upon some other articles that are so coarse and cheap as not to be of sufficient value to bear the numbered class rates. Commodity rates are usually emergency rates and do not remain in force for any considerable length of time. They are sometimes made, also, to meet a cut in rates found to have been made upon similar articles by a competitor. Like other rates, they are lawful when they are just and reasonable and perform a lawful office. Like other rates, they are unlawful when they perform the office of an unjust discrimination against other similar traffic or an unlawful preference or prejudice against a shipper or a locality. The freight business of the United States is, comparatively speaking, carried to a small extent under commodity tariffs by interstate carriers, except in the case of the transcontinental lines. The business of the transcontinental lines, from considerations not necessary here to discuss, is carried largely upon commodity tariffs. But these last-named commodity rates cut no figure upon any question involved in this proceeding.

These being the conclusions of the Commission upon all the material facts found in this proceeding, it is therefore ordered by the Commission that the respondents, The Texas & Pacific Railway Company, The St. Louis, Iron Mountain & Southern Railway Company, The Louisville, New Orleans & Texas Railway Company, The Wabash Railroad Company,

The Southern Pacific Company, The Union Pacific Railway Company, The Northern Pacific Railroad Company, The Baltimore & Ohio Railroad Company, The Lehigh Valley Railroad Company, The Canadian Pacific Railway Company, and each of them, forthwith cease and desist from carrying any article of imported traffic shipped from any foreign port through any port of entry of the United States or any port of entry in a foreign country adjacent to the United States upon through bills of lading destined to any place within the United States, at any other than upon the inland tariff covering other freight from such port of entry to such place of destination, or at any other than the same rates established in such inland tariff, for the carriage of other like kind of traffic, in the elements of bulk, weight, value and expense of carriage.

As to these carriers it is ordered by the Commission that this order take effect on and after the fifth day of May, A. D. 1891.

And it is further ordered by the Commission that all the other defendants than those last above named must in the future comply with the rules and principles settled in this report and opinion in relation to the carriage of import traffic shipped from any foreign port to any port of entry of the United States, or any port of entry in a foreign country adjacent to the United States, upon through bills of lading destined to any place within the United States, by carrying the same upon their inland tariff covering other like kind of traffic in the elements of bulk, weight, value and expense of carriage between such ports of entry and place of destination within the United States.

And it is further ordered by the Commission that as to The Lake Shore & Michigan Southern Railway Company, The New York, Lake Erie & Western Railroad Company, The New York, Pennsylvania & Ohio Railroad Company, The West Shore Railroad Company, The Boston & Maine Railroad Company, The New York, Chicago & St. Louis Railroad Company, The Central Railroad Company of New Jersey, The Philadelphia & Reading Railroad Company, The Chicago & Atlantic Railway Company, The Michigan Central

Railroad Company, The New York Central & Hudson River Railroad Company, The Delaware, Lackawanna & Western Railroad Company, The Chicago & Grand Trunk Railway Company, The Grand Trunk Railway of Canada, The Pennsylvania Railroad Company, The Pittsburgh, Fort Wayne & Chicago Railway Company, The Pittsburgh, Cincinnati & St. Louis Railway Company and the Illinois Central Railroad Company, this proceeding be and the same is hereby dismissed.

COXE BROTHERS & COMPANY *v.* THE LEHIGH VALLEY RAILROAD COMPANY.

Complaint filed October 19, 1888.—Answer filed November 13, 1888.—On memorandum filed by complainants order was entered January 18, 1889, granting leave to the Pennsylvania Railroad Company and certain other interested carriers, and any member of the Trunk Line Association, to appear and join in the defense should they or either of them so desire.—Hearing called January 18, 1889, and on motion of complainants adjourned to February 7, 1889.—Hearing of testimony February 7-12, 1889.—Hearing of argument March 19, 20, 1889.—Briefs and printed arguments filed April 4-12, 1889.—Decided March 13, 1891.

1. CLASSIFICATION OF FREIGHT.—Freight classification is deemed by the railroads convenient and essential to any practical system of rate-making, and is so recognized though not enjoined by the Act to regulate commerce.

2. SAME.—When classificati
crimination or as a mea)f vi
ute, the Act requires the Commissi :o so c ct
classification and arrangement as to correct the a

3. LOWER RATES FOR LONGER HAULS.—Besides terminal expenses and other aggregate charges not dependent upon the distance freight is moved, there are other conditions which justify a lower proportionate charge for longer distances.

4. THROUGH CARRIAGE OVER CONNECTING LINES.—Through transportation over connecting lines is favored by the statute, and the rate over such through lines is correctly adjusted upon the distance through, and not upon the shorter distances over, the several lines.

5. SAME.—Two roads by agreement carried bituminous coal from the Snow Shoe region in Pennsylvania to Perth Amboy, N. J., a distance of about 300 miles, at a higher aggregate, but lower proporate, rate than was charged by one road on anthracite for the distance over its line, the distance over such line being about 150 miles. *Held*, that this was no undue preference in favor of the bituminous coal traffic, and subjected anthracite traffic to no unreasonable disadvantage, except as the anthracite charges might be excessive.

6. PRACTICABLE REGULATION.—A railroad company carrying coal as interstate traffic is the owner of the capital stock of a coal company,

which under its charter holds lands, mines, buys and sells coal, and ships over the lines of said railroad company. *Held*, where such conditions result in violations of the Act to regulate commerce, the only regulation practicable is the enforcement of the provision of the Act requiring rates to be reasonable.

7. GROUP RATES.—It is often impracticable to establish different rates on the same commodity from practically the same locality to the same market, and the owners of mines in the Lehigh anthracite region are subjected to no unreasonable disadvantage from the present grouping of mines based on more than actual distance when shipping east, and less than actual distance when shipping west.

8. UNREASONABLE RATES.—A railroad company had in force for a period of more than two years next before the Act to regulate commerce took effect a scale of charges on anthracite coal considerably lower than its present rates, which are higher on coal than on iron ore, pig iron and other low-grade freight, and also higher than the charges of said road on general freight, the expense of carrying which is much greater than the expense on coal. *Held*, that such higher rates on coal are unreasonable.

9. COMMISSION TO DETERMINE RATES.—The Act to regulate commerce declares every unreasonable charge unlawful, requires the Commission to enforce its provisions and confers the power, and imposes on the Commission the duty of determining what are reasonable rates, as well as what are unreasonable.

10. REASONABLE RATES.—A railroad company by putting in force a rate of charges furnishes evidence that the rate is profitable, which is more convincing when such rate is long maintained; and where a carrier put in force and maintained for nearly two years, immediately after the Act to regulate commerce took effect, a scale of charges largely in excess of that maintained for two years next before the Act, and the lower rates were sufficient to meet all the obligations of the road, including income on investment—*Held*, The higher rate should be reduced.

Franklin B. Gowen, for complainants.

John G. Johnson, *J. Vaughn Darling* and *Henry S. Drinker*, for defendant.

REPORT AND OPINION OF THE COMMISSION.

MORRISON, *Commissioner:*

The complainants in this case, Eckley B. Coxe, Alexander B. Coxe, Henry B. Coxe, and the said Eckley B. Coxe and Alexander B. Coxe, executors of Charles B. Coxe, deceased,

partners, composing the firm of Coxe Brothers & Company, of Drifton, Luzerne county, Pennsylvania, represent:

That the rates of charges of the Lehigh Valley Railroad Company for transporting anthracite coal from the anthracite coal regions in the State of Pennsylvania to tidewater at Perth Amboy, New Jersey, to the lake at Buffalo, New York, and to other points in the States of New Jersey and New York, are unreasonable and unjust.

That the Lehigh Valley Coal Company, a corporation of the State of Pennsylvania, is an owner and lessee of anthracite coal land in said Pennsylvania anthracite coal regions, "an owner or lessee of bituminous coal property in the Snow Shoe district of Centre county, Pennsylvania, a miner, shipper, purchaser and seller of anthracite coal in said anthracite coal regions, and also a miner, shipper and seller of bituminous coal in the said Snow Shoe district, and that large quantities of the anthracite coal mined and purchased, and also of the bituminous coal mined, by the said Lehigh Valley Coal Company" are shipped from the State of Pennsylvania to various points in the States of New Jersey and New York over the railroads operated by said Lehigh Valley Railroad Company, which is owner of the capital stock of said Lehigh Valley Coal Company; that bituminous and anthracite coal are like kinds of traffic; and the defendant is now and has been for some time carrying bituminous coal from said Snow Shoe district to various points in the States of New Jersey and New York at less than one-half the rate per ton per mile charged by the defendant for the transportation of anthracite coal carried contemporaneously with the bituminous under substantially similar circumstances and conditions, over the same line and in the same direction.

"That the said Lehigh Valley Railroad Company is thus charging the complainants more upon anthracite coal than it charges others upon bituminous coal, which is a like kind of traffic as anthracite coal, and is carried contemporaneously with anthracite coal, and substantially under similar circumstances and conditions as anthracite coal is carried."

That the anthracite coal districts are much nearer to the

Atlantic tidewater and other markets out of the State of Pennsylvania to which the defendant carries anthracite coal than is the Snow Shoe district from which the defendant carries bituminous coal to the same markets, and that your complainants and other shippers of anthracite coal in the anthracite coal regions are entitled to such reduced charges on anthracite coal, as compared with those on bituminous coal, as the proximity in distance of the anthracite regions compared with that of the Snow Shoe bituminous region justifies.

That by reason of the discrimination in charges made by the defendant in favor of bituminous coal and against anthracite the complainants and other shippers are excluded from market for certain sizes and qualities of their anthracite coal and the said markets are taken away from them by the shippers of bituminous coal, and the complainants are now and for some time have been obliged to throw away or store at the mines as refuse, large quantities of said sizes and qualities of anthracite coal to their great loss and damage.

That the said Lehigh Valley Railroad Company, by the charges aforesaid, is giving an undue and unreasonable preference and advantage to the bituminous coal traffic, and is subjecting the anthracite coal traffic to undue and unreasonable prejudice and disadvantage, in respect to charges for transportation aforesaid, as compared with the bituminous coal traffic.

And the said complainants further aver:

"That the said Lehigh Valley Railroad Company, either directly in its own name or indirectly in the name of the Lehigh Valley Coal Company aforesaid, is now, and has been for some time past, purchasing anthracite coal in the anthracite regions of Pennsylvania and transporting the same as interstate commerce to tidewater on the coast of New Jersey over the same lines as those over which the complainants are shipping anthracite coal, and selling the said coal so purchased at tidewater at such prices that, after deducting therefrom the price at which the said coal was purchased, and a reasonable and proper allowance for shipping and selling

expenses, there remains as the revenue or receipts for transporting a much less sum than that charged by the Lehigh Valley Railroad Company to the petitioners and public generally for a like and contemporaneous service in the transportation of anthracite coal transported under substantially similar circumstances and conditions."

"That the said Lehigh Valley Coal Company is now, and has been for some years, engaged in mining anthracite coal in the said anthracite regions of Pennsylvania, and shipping the same as interstate traffic over the lines of the Lehigh Valley Railroad Company aforesaid, and selling the same at tidewater, in the Bay of New York and elsewhere, at such prices that, after deducting the public tariff charges of the said Lehigh Valley Railroad Company for the transportation of such coal, there remains to the Lehigh Valley Coal Company, as representing the value of the coal at the mines, much less than the said coal cost to mine, and also much less than the current market price of similar anthracite coal at the said mines. That the Lehigh Valley Coal Company would be unable to transact its business in the manner above mentioned except for the fact that its capital stock is owned by the said Lehigh Valley Railroad Company, which furnishes and supplies the said Lehigh Valley Coal Company with capital and means to make good the losses which necessarily must result to it from the system of doing business as aforesaid, provided the said Lehigh Valley Coal Company paid to the Lehigh Valley Railroad Company the same charges for the transportation of coal so sold as aforesaid as are paid at the same time by other shippers of anthracite coal for similar service under like conditions. And the petitioners aver that the market price of anthracite coal in the Bay of New York is dependent upon and established by the public charges of the Lehigh Valley Railroad Company for the transportation of coal to said Bay of New York, and that by reason of the facts herein stated the said Lehigh Valley Coal Company is enabled to take contracts at much lower than market prices and to undersell all competitors who pay the regular tariff rates and to secure a certain market for its product beyond the reach of competition, which it could not do if it was

treated in charges for transportation upon said anthracite coal the same as the petitioners and the public generally are treated by the said Lehigh Valley Railroad Company. The petitioners do not know, and therefore cannot state, when, and in what manner, the charges for transportation of anthracite coal sold as aforesaid by the Lehigh Valley Coal Company are paid in the first instance to the Lehigh Valley Railroad Company, nor what such charges actually are; but the petitioners charge and aver that if the said Lehigh Valley Coal Company does in the first instance or at any time pay the fixed and regular charges aforesaid for the transportation on the coal so sold as aforesaid, it, the said Lehigh Valley Coal Company, suffers a loss in the business of selling the coal so sold as aforesaid, and that such loss is made up by and is borne by the Lehigh Valley Railroad Company; and the petitioners aver and charge that, as the result of the transaction, the Lehigh Valley Railroad Company actually does receive from the said Lehigh Valley Coal Company much less for the transportation of the said coal so sold as aforesaid than at the same time is charged by the said Lehigh Valley Railroad Company to the petitioners and the public generally for a like and contemporaneous service in the transportation of anthracite coal transported under substantially similar circumstances and conditions."

"That there are many large and important customers of anthracite coal in the Atlantic seaboard and other markets in the States of New Jersey and New York reached by the lines of the said Lehigh Valley Railroad Company who prefer to contract for their coal by yearly or season contracts at a fixed price, delivered to the customers for the year or season. That in order to secure such contracts the petitioners and others shipping anthracite coal as interstate traffic over the lines of the Lehigh Valley Railroad Company must know what the charges for transportation will be for the period over which such contracts extend. That the said charges for transportation on the Lehigh Valley Railroad are not fixed or established for any definite period, but are subject to variation and change from month to month, or at any time, at the will of the said Lehigh Valley Railroad Company, and that,

therefore, your petitioners cannot bid for and secure yearly contracts without taking the risk of an advance of charges for transportation by the Lehigh Valley Railroad Company absorbing their profits or entailing actual loss by reason of such contracts. And your petitioners aver and charge that the said Lehigh Valley Coal Company is now, and has been for some time, engaged in delivering coal as interstate traffic over the lines of the said Lehigh Valley Railroad, which has been sold at a fixed price delivered to the customer for a term embracing the season or the year. And that the said Lehigh Valley Coal Company, if treated in the establishment and maintenance of rates as the petitioners and the public generally are treated by the Lehigh Valley Railroad Company, could not obtain or secure the said contracts without taking a risk such as no prudent business man would take. And your petitioners charge and aver that the said Lehigh Valley Railroad Company discriminates in favor of the said Lehigh Valley Coal Company, either by agreeing to transport the said contract coal at a fixed rate during the existence of the contract, which it does not do in the case of the petitioners or other shippers generally, or else by paying over to the said Lehigh Valley Coal Company, either as an advance or as a gift or other allowance, or by bearing itself, the amount lost by the said Lehigh Valley Coal Company, in the business of such contracts. And your petitioners aver and charge that all losses incurred by the said Lehigh Valley Coal Company for the filling of such contracts aforesaid are borne by the Lehigh Valley Railroad Company, and that as a fact resulting therefrom the said Lehigh Valley Railroad Company receives less money per ton for the transportation of the coal of the Lehigh Valley Coal Company so sold as aforesaid, than it receives per ton for the transportation of other anthracite coal of your petitioners and others carried contemporaneously with the coal of the Lehigh Valley Coal Company and transported substantially under similar circumstances and conditions as the said coal of the Lehigh Valley Coal Company is transported."

And the complainants aver and charge that the transac-

tions and methods of business stated in the last above three paragraphs and in each of them are in contravention of the provisions of the "Act to regulate commerce," in this—

"That the said Lehigh Valley Railroad Company is thus charging the petitioners more for the transportation of anthracite coal as interstate traffic than is charged to the Lehigh Valley Coal Company on anthracite coal transported as interstate traffic and carried contemporaneously with that of the petitioners and under substantially similar circumstances and conditions.

"That the said Lehigh Valley Railroad Company is giving an undue and unreasonable preference and advantage to the Lehigh Valley Coal Company, in the matter and regulation of charges for the transportation of anthracite coal as interstate traffic over the petitioners and other shippers.

"That the Lehigh Valley Railroad Company is subjecting the petitioners and other shippers, who pay the public and fixed tariff charges, to an undue and unreasonable prejudice and disadvantage in the matter and regulation of charges for the transportation of anthracite coal as interstate traffic aforesaid as compared with the Lehigh Valley Coal Company."

The defendant railroad company, answering, denies that its charges are unreasonable and unjust, that it is giving undue and unreasonable preference and advantage to the bituminous coal traffic, is subjecting the anthracite coal traffic to undue and unreasonable prejudice and disadvantage, or is unjustly discriminating against the complainants in respect of its transportation charges, or in any respect. It admits its charges are higher on anthracite coal than on bituminous, but denies that on bituminous they are less than one-half the rate per ton per mile charged on anthracite to interstate points in New York and New Jersey, or that the complainants and other shippers of certain sizes and qualities of anthracite coal as interstate traffic are excluded from interstate markets by reason of the discrimination in charges in favor of bituminous coal.

The defendant company further denies that large quantities of bituminous coal are shipped as interstate traffic by the Lehigh Valley Coal Company over the railroads operated by defendant; denies that shippers of anthracite coal from said anthracite coal regions "are entitled to such reduced charges on anthracite coal, as compared with those on bituminous coal, as the proximity in distance of the anthracite regions compared with that of the Snow Shoe bituminous region justifies;" and the defendant denies that bituminous is a like kind of traffic with anthracite, or that both are carried by defendant under substantially similar circumstances and conditions, and avers that bituminous coal is found in different localities from anthracite; is mined in a different way, at very much less cost; is used mainly for manufacturing, and anthracite for domestic, purposes, and the extent of the competition between them is comparatively slight.

The defendant, further answering, denies that it has transported coal for the Lehigh Valley Coal Company at less rates than the rates charged complainants for a like and contemporaneous service under substantially similar circumstances and conditions; denies that either directly in its own name or indirectly in the name of said coal company, or any other name, it has purchased anthracite coal, transported the same as interstate commerce and sold the same at tidewater or elsewhere; and denies that any advantage, direct or indirect, is given to said coal company in the transportation of anthracite coal or other commodity. The defendant avers that said coal company pays the same regular transportation rates as other shippers, and at the same time and in the same manner as do other shippers; that said coal company bears its own business losses, receives reimbursements, rebates or privileges in no way, directly or indirectly; contracts at its own risk, subject to all the chances of changes in rates of transportation taken by other shippers, and is treated by defendant with absolute impartiality; and that the market price of anthracite coal in the Bay of New York is not dependent upon, nor established by, the defendant's charges.

And, further, the defendant denies that its transactions and methods of business, in respect of its relations to and with

tions and methods of business stated in the last above three paragraphs and in each of them are in contravention of the provisions of the "Act to regulate commerce," in this—

"That the said Lehigh Valley Railroad Company is thus charging the petitioners more for the transportation of anthracite coal as interstate traffic than is charged to the Lehigh Valley Coal Company on anthracite coal transported as interstate traffic and carried contemporaneously with that of the petitioners and under substantially similar circumstances and conditions.

"That the said Lehigh Valley Railroad Company is giving an undue and unreasonable preference and advantage to the Lehigh Valley Coal Company, in the matter and regulation of charges for the transportation of anthracite coal as interstate traffic over the petitioners and other shippers.

"That the Lehigh Valley Railroad Company is subjecting the petitioners and other shippers, who pay the public and fixed tariff charges, to an undue and unreasonable prejudice and disadvantage in the matter and regulation of charges for the transportation of anthracite coal as interstate traffic aforesaid as compared with the Lehigh Valley Coal Company."

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And, further, the defendant denies that its transactions and methods of business, in respect of its relations to and with

said coal company, or otherwise, are in contravention of the provisions of the Act to regulate commerce.

Reasonable ground appearing therefor, investigation of the matters complained of was made; and upon consideration of the evidence, proofs and the argument of counsel, the Commission finds the following facts:

Coxe Brothers & Company, complainants, are, and for many years have been, miners and shippers of anthracite coal. Their mines are situated in the Lehigh (Pennsylvania) coal region, and have a present annual capacity exceeding one and a half million tons. Their shipments last year (1888) were 1,128,077 tons.

In addition to the complainants there are other individual miners and shippers of anthracite coal from the anthracite coal regions to points in New Jersey and New York. The railroad companies engaged in carrying coal from said anthracite regions are also miners and shippers, and either directly, or through subsidiary companies in which they own the capital stock, said railroad companies mine and control three-fourths of all the coal produced in the anthracite regions.

The complainants' shipments of anthracite coal are mainly over the roads of the Lehigh Valley Railroad Company. The principal port on tide-water to which such coal of the complainants is transported over the road of the defendant for shipment in vessels to Atlantic ports is Perth Amboy. The chief lake port to which such coal is transported by said Lehigh Valley Railroad Company for shipments by rail or in vessels to other lake ports is Buffalo, which is reached by said Lehigh Valley Railroad Company over its own lines and the lines of the New York, Lake Erie & Western Railroad Company, over which the Lehigh Valley Railroad Company is a transporter and common carrier to Buffalo, and for which it allows and pays a trackage charge of one-half its mileage rate for the distance over the lines of the New York, Lake Erie & Western Railroad Company.

The Lehigh Valley Railroad Company, defendant, is a common carrier, engaged in interstate transportation, and a

common carrier of coal as well from the Lehigh and Mahanoy as from the Wyoming (Pennsylvania) anthracite coal region to Perth Amboy, New Jersey, Buffalo, New York, and to various other places in said States of New Jersey and New York.

The main line of the Lehigh Valley Railroad reaches the Lehigh anthracite region at a distance of little over a hundred miles from Perth Amboy. The coal is gathered or collected from the mines and carried to the main line over lateral or branch roads of various lengths. The branch lines or roads run through a populous country, and large manufacturing interests have grown up along them. The coal which is collected over the branches where grades are steep is in loads less than the full train loads carried to tide, and is made up, weighed and forwarded from Packerton in through train loads. At Perth Amboy, by means of extensive yards, docks and trackage, the coal is unloaded through chutes, by gravity, directly into vessels. The terminal expenses in the coal regions for collecting, weighing and forwarding is variously stated in the testimony to be 8 to 25 cents per ton, and the expense for receiving and delivering at Perth Amboy is also stated to be 8 to 25 cents, or for the two terminals 16 to 50 cents. These expenses amount to about 30 cents.

The shortest distance from any of complainants' mines to Perth Amboy is 128 miles; the longest 145 miles; the average distance from all about 135 miles. The average distance from all mines in the Lehigh and Mahanoy regions is, to Perth Amboy, 149 miles; to Buffalo, 330 miles. From the Wyoming region the average distance to Perth Amboy is 171 miles; to Buffalo, 268.

In addition to the defendant company there are several other railroad companies engaged in transporting anthracite coal from the anthracite regions to the lake at Buffalo and to tide-water at or near Perth Amboy, all of which companies publish substantially the same rate of charges as the defendant.

The published rates on anthracite coal from the Lehigh and Mahanoy regions over the Lehigh Valley road to Perth

Amboy for reshipment on sizes larger than pea and buckwheat were, for the fifteen months between June, 1875, and September, 1876, the highest $2.60, the lowest $2.30. In the seventeen months from September 1, 1876, to February 1, 1878, the rate was changed six times, and the highest was $1.62, the lowest $1.36. In 1878 there were four changes; the highest rate was $1.75, the lowest $1.62. In 1879 there were nine changes; the highest rate in that year was $1.62, the lowest $1.00. In 1880 the highest was $1.90, the lowest $1.40. In the nearly four and a half years from September, 1880, to February, 1885, there were few changes and the rate was, a part of the time, $1.75 and $1.77, but for the greater part $1.90.

A lower rate on pea, buckwheat and culm than on the prepared or larger sizes was first published April 1, 1884.

Between February 2, 1885, and April 4, 1887, the rates were:

	On larger sizes.	On pea and buckwheat.	On culm.
February 2, 1885, to August 27, 1885	$1.57	$1.37	$1.37
August 27, 1885, to October 1, 1886	1.37	1.17	1.17
October 1, 1886, to April 4, 1887	1.47	1.27	1.27
Average	$1.445	$1.245	$1.245

The average rate on all sizes for year ending November 30, 1886, was $1.34.

Since the Act to regulate commerce the rates have been:

	On larger sizes.	On pea and buckwheat.	On culm.
April 4, 1887, to November 21, 1887	$1.56	$1.41	$1.41
November 21, 1887, to December 12, 1887	1.8	1.66	1.66
December 12, 1887, to March 12, 1888	1.90	1.75	1.75
March 12, 1888, to April 2, 1888	1.70	1.55	1.55
April 2, 1888, to May 1, 1888	1.70	1.45	1.45
May 1, 1888, to September 1, 1888	1.70	1.40	1.20
Average for the year ending November 30, 1887	$1.54	$1.36	$1.36
Average for the year ending November 30, 1888	1.77		

The rates on anthracite coal, per gross ton, over the Lehigh Valley road, as established September 1, 1888, and in force when this complaint was made and heard, were:

Rates on Anthracite Coal to Perth Amboy.

Per ton.	Larger or prepared sizes.	Pea.	Buckwheat.	Culm.
From Lehigh and Mahanoy regions	$1.80	$1.40	$1.40	$1.20
From Wyoming	1.90	1.50	1.50	1.30

To Buffalo from all regions on all sizes, $2.25 per ton.

The above rates from the Lehigh and Mahanoy regions to Perth Amboy average on all sizes $1.69 per ton.

Lower rates are made to intermediate points than to Perth Amboy. From such lower rates on the larger sizes to such intermediate points, 40 cents on pea and buckwheat and 60 cents on culm are deducted where such deduction does not reduce the rate on such smaller sizes and culm below $1.15 per gross ton.

At the time of making and hearing this complaint the defendant and other carriers of anthracite coal charged by their public tariff all shippers from the Lehigh and Mahanoy regions to Perth Amboy and other points in New Jersey the same amount per ton for the same sizes of coal, and all shippers from the Wyoming region to Perth Amboy and other points in New Jersey 10 cents per ton more than from the Lehigh and Mahanoy regions, and all shippers from all three regions the same amount per ton on coal shipped to Buffalo, and such charges were severally made irrespective of the distance the coal was so carried from each mine to the place of destination.

The practice of grouping and maintaining the same rates on shipments to Buffalo and points west from all the anthracite regions, and of maintaining one rate on shipments from all mines in the Wyoming region and another rate on shipments from all mines in the Lehigh and Mahanoy regions to Perth Amboy has been long in use.

On April 15, 1889, after this case was heard, the defendant and other carriers put in force a schedule making some reductions in the rates from said anthracite coal regions to Perth Amboy and to Buffalo, which rates are still in force, and are as follows:

Anthracite Coal to Perth Amboy, April 15, 1889.

Per ton.	Prepared sizes.	Pea.	Buckwheat.	Culm.
From Lehigh and Mahanoy regions	$1.70	$1.40	$1.20	$1.20
From Wyoming region	1.75	1.45	1.25	1.25

To Buffalo from all regions on all sizes, $2.00.

The above rates from the Lehigh and Mahanoy regions to Perth Amboy average on all sizes $1.60 per ton—9 cents less than the average when the case was begun and heard. The operators sell their coal at all the principal markets, through agencies or sales agents, who establish circular prices. The cost of selling varies from 7 to 15 cents or more, depending on the quantity sold. The cost of selling may average about 12 cents. It was stated in argument by counsel for complainant without question, but assented to by counsel for the Lehigh road, that after the testimony in this case had been closed a reduction of 40 cents per ton in the selling price of coal in New York market had been agreed upon by the sales agents, the carriers owning directly or indirectly a majority of the coal interests represented by such agents.

The area of the Pennsylvania anthracite coal fields is about 470 square miles. The annual product for 1888 was about 38,000,000 tons. The annual average since 1880 has been about 32,000,000, and the average annual product for the ten years ending in 1880 was about 20,000,000 tons.

The coal as mined is of different sizes, and the sizes have different values. One-fourth is of the largest sizes, known as lump, steamboat, and broken coal; one-half is egg, stove and nut coal, used for "domestic purposes." Twenty per cent. (10 pea, 10 buckwheat) is pea and buckwheat, and 5 per cent. culm. The per cent. of sizes produced at different mines is not uniform, but the complainants and defendants concede the above to be a fair average.

The royalty or value of the coal before mining is about 40 cents per ton of the lump, steamboat, broken, egg, stove and nut, about 10 cents for the pea and buckwheat, and 5 cents for the culm.

The cost of mining coal includes its preparation for market, depreciation of plant and loading, and is different at different mines. The average cost of mining all sizes is

variously stated in the testimony to be $1.25 to $1.55, and as much as $1.55 is sometimes paid exclusive of depreciation. The testimony puts the royalty at 30 to 45 cents. We find the cost of mining with royalty added to be about $1.85.

The value of the sizes larger than pea and buckwheat at the mine is approximately the same—about $2.20; pea, 80; buckwheat, 30 to 60 cents. Culm at the mine has only a nominal value.

Carriers by rail classify all freight with few exceptions, and fix the same rate on all of the same class. The classifications are not uniform, and those adopted by the roads in some parts of the country are not in use in others. The Official Classification is in force in part of Illinois and in all the country east of that State and north of the Ohio and Potomac Rivers, including the anthracite or hard coal region. Coal, hard and soft, is excepted in the Official and other Classifications, and is rated on all roads as a commodity.

Most New England roads make the same charges on anthracite and bituminous. The principal roads from Buffalo west to some points in Indiana, Illinois and Iowa, and some of the roads forming lines from the anthracite region to the same western points, charge less on anthracite than on bituminous, but the rates generally prevailing throughout the country are higher on anthracite.

Bituminous coal is carried from the Snow Shoe mines, Centre county, Pennsylvania, over the Pennsylvania Railroad to Mt. Carmel, Pennsylvania, and thence over the Lehigh Valley Railroad to Phillipsburg, Bound Brook, Elizabeth, Perth Amboy and other points in New Jersey for $2.25 per gross ton, each road receiving a mileage *pro rata* share of the entire charge.

The total distance over both roads, the distance over the Lehigh Valley road and its *pro rata* share of the rate on bituminous coal are as follows:

From Snow Shoe District.

	Total distance.	Lehigh Valley R. R. mileage.	Lehigh Valley R. R. share of rate.
To Phillipsburg	237	101	$0.938
To Bound Brook	280	144	1.157
To Elizabeth	303	155	1.151
To Perth Amboy	295	159	1.213

Other bituminous mines in the counties of Clearfield, Jefferson, and Cambria, Pennsylvania, some of which are 375 miles from tide-water at New York, are grouped with the Snow Shoe mines, and have the same rate to Perth Amboy and other tide-water points, and the Pennsylvania road with its connections maintains the same rate, $2.25, to tide-water or New York harbor from the Cumberland (Maryland) region and from stations on the West Virginia Central road, some of which are distant from New York 450 miles and more.

New England, New York, New Jersey and Eastern Pennsylvania draw their supply of bituminous coal largely from the Cumberland and Snow Shoe regions and from other mines in Pennsylvania and West Virginia, from which the rate of $2.25 by rail to tide-water at New York is maintained.

These eastern markets receive supplies from the Cumberland region, which reach tide-water at Baltimore, and bituminous coal also for these markets is produced at low cost in Virginia, and shipped through the ports of the same State. The all-rail rate from these Pennsylvania, Maryland and West Virginia mines to New York harbor is from 7½ to 5 mills or less per ton per mile.

The Lehigh road carries iron ore from Perth Amboy to Bethlehem, Pa., 72 miles, at 8 mills per ton per mile. At the same rate the charge for 149 miles to the Lehigh region would be $1.20 per ton. On foreign ores the rate from Perth Amboy to furnaces in the Lehigh region is 6 mills per ton per mile. East from Buffalo to furnaces, 300 to 400 miles, the ore rate is 5 mills per ton per mile. On pig iron the Lehigh road's rates for the same distances and localities are substantially the same as on ores.

The royalty or value of the bituminous coal before mining in these Pennsylvania, West Virginia and Maryland mines is about 10 cents. Its value at the mine on the cars is about 80 cents. The difference in the cost of mining at different mines is very considerable, and at some mines it is estimated at less than 50 cents per gross ton; at others considerably more.

The two coals, anthracite and bituminous, are loaded and unloaded by gravity. The anthracite is generally heavier

and fills less space. It is harder, smoother and slides easier in loading and unloading, but in consequence of greater value the larger sizes are transported at greater risk. But in these respects the difference is slight and the expense of handling and transporting the two coals under the same circumstances is nearly the same. The heating and steam-producing power of bituminous is appreciably greater. But the anthracite, of prepared sizes for domestic use, is greatly preferred wherever obtainable, because of its greater freedom from smoke and dust; and because of these same qualities its use is deemed essential in certain lines of manufacture.

The average price per ton of bituminous and of anthracite coal, larger sizes, at New York, f. o. b., for several years have been:

Year.	Bituminous.	Anthracite.
1880	$4.50	$3.90
1881	4.25	4.15
1882	4.25	4.20
1883	4.00	4.20
1884	3.25	3.92
1885	3.00	3.41
1886	3.00	3.34
1887	3.00	3.72
1888	3.00	3.93

The price at New York of the smaller sizes is, for pea $2 to $2.50; for buckwheat, $1.50 to $2; the average price for pea and buckwheat about $2.

The consumption of anthracite has about doubled and bituminous quadrupled in the last ten years. The displacement of the larger sizes of anthracite by bituminous for steam purposes in the last ten years, especially in New England, has been very considerable.

The Lehigh Valley Coal Company is a corporation, and is owner and lessee of anthracite and bituminous coal land, miner, shipper, purchaser and seller of anthracite and bituminous coal, large quantities of which coals are shipped over the roads of the Lehigh Valley Railroad Company from Pennsylvania to various points in New Jersey and New York

as alleged by complainants, but the quantity of bituminous coal thus shipped over the defendant's roads is very small in comparison with the anthracite so shipped.

The Lehigh Valley Railroad Company is the owner of the capital stock ($650,000) of the Lehigh Valley Coal Company, and has invested in it $7,500,000, and furnishes it, free of interest, with money to do its business. Five of the six directors of the coal company are directors of the railroad company, and both corporations have the same president and secretary.

The total coal production of said coal company, or anthracite mined from its beginning in 1874 to 1886, inclusive, was 13,000,000 tons, the admitted profits on which were $1,073,567.45. In 1887 it mined 1,201,416 tons, from which it derived net profits $337,588.42. In the same year it bought and sold 1,404,944 tons at a profit of $60,524.45. In 1888 it mined 1,455,104 tons at a profit of $431,465.83, and bought and sold 1,346,161 tons at a profit of $12,495.28.

In ascertaining and stating mining profits for years 1887 and 1888 no interest was taken into account or charged, but usual allowance was made for depreciation. Royalty was charged at 25 cents on larger sizes, 12½ on pea, and 6¼ on buckwheat; average 22 cents. In 1887 the expense of selling charged was 6.35 cents; in 1888, 6.47 cents. No data are given as to basis on which admitted profits previous to 1887 were obtained, or whether or not depreciation and royalty were charged.

Under a yearly or season contract between the coal company and the Manhattan Railway Company of New York City, the coal company delivered to said Manhattan Railway Company at its docks in New York City 13,000 tons monthly during the years 1887 and 1888 of best anthracite broken coal at $3.45 per ton. On January 1, 1889, said contract was renewed for one year and the price increased to $3.65 per ton. The coal company paid 20 cents per ton lighterage, reducing the price received at Perth Amboy to $3.25 and $3.45, which was less than the cost of delivery or the selling price.

Of its operations in buying, shipping, and selling, some were profitable; in others it incurred losses and sold for less

than the amount necessary to reimburse it. Its transactions were daily, and its monthly statements of profit and loss show some losing transactions each month.

It sold coal in Pennsylvania, New York and other States, and the several sales and transactions were so intermingled that it is not practicable to determine all the sales made at a profit or at a loss as between state and interstate traffic.

The balance sheet of Lehigh Valley Railroad Company for the year ending June 30, 1888, reported to the Commission, shows:

Cost of road	$14,663,280.78
Cost of equipment	13,451,133.78
Bonds of other companies owned	4,084,104.69
Stocks of other companies owned	16,927,653.73
Other permanent investments	6,861,852.10
Lands owned	2,535,290.09
Cash items	3,179,490.74
Sundries	5,305,322.57
	$67,008,128.48
Capital stock	$39,057,000.00
Scrip	172,210,00
Funded debt	25,067,000.00
Mortgage, real estate	45,000.00
Uncollected dividend and interest	86,481.84
Sundries	549,370.63
Profit and loss	2,030,516.01
	$67,008,128.48

The Lehigh Railroad has guaranteed the debt of the Easton & Amboy Railroad, $6,000,000, and "the stock and bonded debt" of the Morris Canal and Banking Company, $2,273,000, aggregating $8,273,000.

Balance sheet Lehigh Valley Railroad Company reported to stockholders for year ending November 30, 1886.

Our income from all sources including interest received from investments, etc., amounted to	$9,395,802.06
Operating expenses of the road	5,293,816.56
Leaving	$4,101,985.50

Against which there has been charged:

Interest on bonds (including interest on guaranteed bonds and stocks)	$2,048,201.50	
Dividends on preferred and common stock	1,331,531.00	
General expenses, interest on floating debt, Pennsylvania and New Jersey State taxes, loss on Morris Canal, estimated depreciations, etc	682,002.96	4,061,735.46
Leaving		$40,250.04

to be carried to the credit of the profit and loss account.

Our capital account at the close of the fiscal year was as follows:

Preferred stock	$106,300.00	
Common stock (including scrip not yet converted)	33,112,800.00	33,219,100.00
First mortgage six per cent. bonds due in 1898 (coupon and registered)		5,000,000.00
Second mortgage seven per cent. bonds due in 1910 (registered)		6,000,000.00
Consolidated mortgage six per cent. bonds due, except sterling and annuity bonds, in 1923:		
Sterling	$3,318,000.00	
Coupon	1,787,000.00	
Registered	8,210,000.00	
Annuity	1,143,000.00	14,458,000.00
Floating debt, less cash on hand	None.	
		$58,677,100.00

Balance sheet Lehigh Valley Railroad Company reported to stockholders for year ending November 30, 1887.

Our income from all sources, including interest received from investments, etc., amounted to		$11,197,167.72
Operating expenses of the road		6,142,396.25
Leaving		5,054,771.47
Against which there has been charged:		
Interest on bonds (including interest on guaranteed bonds and stocks)	$2,041,171.50	
Dividends on preferred and common stocks	1,584,081.11	
General expenses, interest on floating debt, Pennsylvania and New Jersey State taxes, loss on Morris Canal, estimated depreciations, etc	1,018,747.31	4,643,999.92
Leaving		$410,771.55
to be carried to the credit of the profit and loss account, to which is to be added		114,700.00

premium realized from the sale of bonds.

Our capital account at the close of the fiscal year stood as follows:

Preferred stock	$106,300.00	
Common stock (including scrip not yet converted)	33,128,700.00	$33,235,000.00
First mortgage six per cent. bonds due in 1898 (coupon and registered)		5,000,000.00
Second mortgage seven per cent. bonds due in 1910 (registered)		6,000,000.00
Consolidated mortgage six per cent. bonds, due, except sterling and annuity bonds, in 1923:		
Sterling	$3,117,000.00	
Coupon	1,775,000.00	
Registered	8,122,000.00	
Annuity	1,243,000.00	14,257,000.00
Floating debt, less cash on hand	None.	
		$58,492,000.00

Balance sheet Lehigh Valley Railroad Company reported to stockholders for year ending November 30, 1888.

Our income from all sources, including interest received from investments, etc., amounted to		$12,353,739.29
Operating expenses of the road		7,128,234.73
Leaving		$5,225,504.56

Against which there has been charged:

Interest on bonds (including interest on guaranteed bonds and stocks)	$2,081,284.66	
Dividends on preferred and common stocks	1,890,876.28	
General expenses, interest on floating debt, Pennsylvania and New Jersey State taxes, loss on Morris Canal, estimated depreciations, etc	967,873.54	4,940,034.48
Leaving		$285,470.18

to be carried to the credit of the profit and loss account.

Our capital account at the close of the fiscal year stood as follows:

Preferred stock	$106,300.00	
Common stock (including scrip not yet converted)	39,601,250.00	$39,707,550.00
First mortgage six per cent. bonds, due in 1898 (coupon and registered)		5,000,000.00
Second mortgage seven per cent. bonds, due in 1910 (registered)		6,000,000.00
Consolidated mortgage six per cent. bonds, due, except sterling and annuity bonds, in 1923:		

Sterling	$2,904,000.00	
Coupon	1,725,000.00	
Registered	8,060,000.00	
Annuity	1,355,000.00	14,044,000.00
Floating debt, less cash on hand	None.	
		$64,751,550.00

The business; receipts, with sources from which derived; expenses, and on what account incurred, for year ending November 30, 1887, *as appears from the annual report of said railroad company, were:*

	Carried one mile.	Gross receipts.	Expenses.	Net receipts.
Coal, tons	513,889,171.02	$6,165,411.29	$3,431,609.83	$2,733,801.46
Other freight, tons	253,564,921.56	2,430,761.13	1,902,595.93	528,165.20
Passenger, express and mail	44,512,264.00	1,122,883.65	808,190.49	314,693.16
Totals		$9,719,056.07	$6,142,396.25	$3,576,659.82

The annual report of said railroad company to its board of directors for the year ending November 30, 1888, does not state the facts shown above for the year 1887.

From the above reported facts it appears that the ton-mile receipts, expenses and profits or net receipts for the year 1887, were on:

	Gross receipts per ton per mile. Mills.	Expenses per ton per mile. Mills.	Net receipts per ton per mile. Mills.
Coal	12.00	6.67	5.32
General freight	9.58	7.50	2.08

The operating expenses for the transportation of all freight are 63 per cent. of the reported operating income, while the cost of transporting coal is but 56 per cent. of the income from coal, as appears from the said annual report of 1887.

The estimated cost of carrying coal from the Lehigh and Mahanoy regions to Perth Amboy based on said report is 85 cents per ton, which for the group or average distance of 149 miles is nearly six mills per ton per mile, taking tide coal as an average, some being carried to other points at lower and some at higher rates.

The operating expenses for all the railroads of the United States reported to the Commission for the year ending June 30, 1888, was 65.34 per cent. of operating income.

The Lehigh Valley Railroad Company has declared dividends on its capital stock since January 1, 1887, at the rate

of five per cent. In the years previous to 1887 dividends had been declared as high as ten per cent. and as low as four per cent.

The total coal tonnage for said railroad company was, for the year 1886, 6,701,736 tons; for 1887, 6,883,957 tons, and for 1888 was 8,025,334 tons.

The above are the facts upon which the conclusions in this proceeding are based.

The questions presented for determination are the alleged undue preferences, unjust discriminations and unreasonable rates pertinent to which the complainants submit for the consideration of the Commission proposed findings of fact in substance as follows:

1. That the Lehigh Valley Railroad Company carries anthracite and bituminous coals over the same distance in the same direction under different classifications, that the tariff sheets and rates applicable to anthracite do not apply to bituminous, and that the two coals are a like kind of freight and should be classed together as one class of freight.

2. That the acts done by the Lehigh Valley Coal Company connected with the buying and selling of coal and the transportation of the same over the road of the Lehigh Valley Railroad Company are the same as if done by said railroad company, and as done constitute illegal and unjust discrimination against the complainants and the public generally; and that the proper rate to be paid by all shippers over said road between the same points at the same time is ascertained by deducting from the established rate the loss sustained by said coal company as buyer of coal for shipment over said railroad.

3. That the average rates per ton per mile charged by the Lehigh Valley Railroad Company on anthracite coal are higher than on general freight, and that the rate of $1.80 per ton of 2,240 pounds to Perth Amboy from the Lehigh coal region, a distance of about 135 miles, is excessive and unreasonable, "and should be reduced to what the Commission may decide to be a reasonable rate."

It is conceded that the bituminous coal mines are twice or more than twice as distant as the anthracite mines from New York harbor or Perth Amboy, while the transportation charges on bituminous were and are greater in the aggregate, but less in proportion to distance, or per ton per mile; it is shown that in the last ten years the price of anthracite in eastern markets has been maintained and the price of bituminous considerably reduced; and that many manufacturers and consumers discontinued the use of anthracite and substituted bituminous while the complainant and other producers failed to find profitable markets for anthracite they produced and were prepared to produce.

The complainants insist that the displacement of anthracite by bituminous has deprived them and other miners of hard coal of profitable markets, and that this condition is the result of excessive rates on anthracite and of inequality and discrimination in favor of bituminous; that a readjustment of rates on a basis of the relative distances of the fields of production would reinstate the anthracite in eastern markets; and that the classification of the two coals as one freight would remove the inequality and discrimination in favor of bituminous and establish all coal charges on a mileage basis, except to the extent that terminal expenses might modify the rate per ton per mile for longer distances.

For convenience in making transportation rates and charges, freight is arranged and put into different classes according to expense of carriage, bulk, value, risk, competition and other considerations affecting the cost and value of the transportation service. Different classifications have been and are still maintained in various sections of the country, and it frequently occurs that articles classed together in one section of the country are placed in separate classes in another section. The number of separate classifications has been so reduced and such as are still in force so revised in the past few years as to give assurance that one uniform classification applicable to all the roads of the country is entirely practicable. By the arrangement of the various articles or subjects of freight into classes many hundreds of such articles are given one and the same rate. Without such arrange-

ment railroad companies would necessarily be required to fix a rate on each one of the several thousands of articles carried by them.

What is known as the "Official Classification" is in force in a large part of Illinois and in all the district of country east of that State and north of the Ohio and Potomac Rivers, including the anthracite coal fields. Under this classification, freight, with few excepted articles, is collected, arranged and numbered into six classes and given as many separate rates. The freight not included in any of the six classes is mostly coal and other minerals, and articles of great weight as compared with their value. These are classed or rated by name as a commodity. Anthracite and bituminous coals are so named and rated respectively as such, or as hard and soft coal, and as a rule a higher rate is charged on the hard or anthracite. Again, the anthracite is arranged, classed and rated in more minute divisions, according to sizes, uses and the different value resulting from such sizes and uses.

One complaint we are to consider and which we are asked to remedy is this separate classification or rating of hard and soft or anthracite and bituminous coals. We are asked to find that the two are the same freight, a like kind of traffic, the result of which would be to subject them to the same charge, when carried under like circumstances.

In the present state of the law classification or the arrangement of articles together for convenience in rating them is not obligatory on the roads. They might legally fix a rate on every article of freight by name without other arrangement or classification. Such a system has proven to be so cumbersome and inconvenient that the arrangement of freight into classes is deemed by the roads an essential part of rate-making and it is so treated by the Act to regulate commerce, which requires that the schedule of charges which every common carrier must keep open to the public "shall contain the classification in force."

Under the Official Classification the charge per hundred pounds between New York and Chicago is:

Class.....	1	2	3	4	5	6
Cents.....	75	65	50	45	30	25

The charges on grain, salt or other freight in the sixth class is 25 cents. The rate may be doubled by changing the classification from the sixth class to the third; and classification may be used as a device to effect unjust discrimination or as a means of violating the most essential provisions of the statute. When so used it is the duty of the Commission to so revise such arrangement as to correct the abuse.

The grounds upon which we are asked to find these two coals to be the same freight, a like kind of traffic, is that they are loaded, unloaded and transported in the same way and substantially at the same expense to the carrier, and are largely used for the same purposes, though one-half or more of the anthracite is used for domestic purposes.

Ordinarily there is no better criterion for reasonable charges than that which is in proportion to the service rendered; and if the cost and expense of the carrier was the only test of a reasonable charge the claim might well be made that all coals should be classed together as one freight and be subject to the same transportation charges.

Carriers in making separate classifications, or rates for different coals, take into consideration not only the expense of transportation, but the value of the freight and worth of the transportation to the shipper; the exceptional qualities which fit the more valuable anthracite for domestic and special uses and cause its large consumption in less distant markets; the shorter distance from the mines to the principal markets rendering the transportation proportionally more expensive, and the necessity for so apportioning the transportation charges between the anthracite of different sizes and values that the more valuable may bear the greater charge.

Transportation is sought by the shipper for the profit it yields, and will cease when it becomes unprofitable. In the ordinary course of business, income or profits are proportioned to the investment, and a carload of ten tons of anthracite coal worth fifty dollars affords larger profits and can better bear full transportation charges than a like quantity or carload of bituminous worth twenty dollars; and the value of the freight with the worth of the transportation service

to the shipper are taken into account in determining classification.

The rule insisted upon and claimed to be especially applicable to coal, that the cost of the service alone should determine freight classification and freight charges, will apply as well to different sizes and values of anthracite as to bituminous and anthracite. Under such a rule the different sizes of anthracite now carried at different rates would be one freight and take the same rate, while a difference is now made of 30 to 50 cents per ton between the larger and smaller sizes. Let it be assumed that $1.70, the average anthracite rates to Perth Amboy complained of, was 30 cents too high, and that $1.40 was the reasonable rate for all anthracite. This is now the rate on pea, the best of the lower grades of anthracite, while on buckwheat and culm it is but $1.20.

Classification of anthracite in disregard of sizes and values would add 20 cents per ton to the charges on some and reduce them on none of these lower grades of coal. The undue preference complained of is chiefly the alleged exclusion of these certain grades of anthracite from market by discrimination in rates. The result of classifying and rating all coal, including these lower grades or smaller sizes, as one freight would be that the smaller anthracite coals at the increased rate would be at still greater disadvantage than they now are, and for ordinary steaming would be cut out by bituminous, while for the uses in which anthracite is indispensable the larger sizes at the same rate would displace the smaller. The consequence would be that 25 per cent. in quantity, or about 16 per cent. in present value, of all anthracite mined would be unable to bear the burden of transportation and would be waste until such time as it could be locally converted into power and the power transmitted. There is, therefore, for the present, no hardship, but economy, in making the best bear some of the burden of the inferior, which is not a voluntary but a resulting production. To determine otherwise and make waste of lower grades is to impose on the higher grades the entire cost of producing both. The result would be to largely increase the cost of

production and the price of merchantable anthracite, and make waste of about one-fourth of all that is mined.

Insisting that they are deprived of markets by charges which are both excessive and disproportionate, the complainants ask that the rates may be adjusted in proportion to distance, making due allowance for difference in the cost of collecting, loading, unloading, and other terminal expenses.

If, as complainants assert, they are deprived of markets by excessive and disproportionate charges, and the adjustment of coal rates in proportion to distance would remedy the evil, still this could not be accomplished by classifying hard and soft coal together. Such classification would have some bearing on the general question of relative rates on the two coals carried between the same places, or between different places under similar circumstances, but could not much affect the rates in question on anthracite carried 125 to 185 miles, and bituminous carried all-rail 300 to 500 miles, nearly, and at aggregate rates 55 cents to $1.05 per ton greater than the aggregate on anthracite.

The defendant company claims for terminal expenses, in taking up coal at the Lehigh and Mahanoy region, and delivering it at Perth Amboy, an average distance of one hundred and forty-nine miles, 50 cents, or one-third of a cent per ton per mile. The same terminal expenses on bituminous carried from the Snow Shoe to Perth Amboy, 300 miles, would be but one-sixth of a cent per ton per mile. But there are considerations apart from terminal expenses which make transportation for long distances proportionally less expensive and more advantageous to the roads than for short distances. Many items of expense and much of the cost of operating a road are the same whether the business of the road is large or small, and therefore as the volume of business increases the expense apportioned to it is less, and as the distance is extended the volume is increased. The best managed roads do not always have full trains and full cars, and are subject to expensive delays and loss of time while securing freight. The opportunity for back-loading increases with the distance, while delays and losses are as applicable to long as to short distance freight, and, as in

case of terminal expenses or other aggregate charges, the cost of such delays and losses are less per mile when apportioned to longer carriage and to increased volume of business.

There are several lines other than that of which the defendant's line is part over which coal is carried from the Snow Shoe district to New York harbor, and these lines are of different lengths. On the basis of equal mileage there could be no competition between the roads. The shortest having the least mileage and lowest rate would get the business. The New Orleans Cotton Exchange Case, 2 I. C. C. Rep. 375. 2 Inters. Com. Rep. 289.

The undue preference of which complaint is made of the Lehigh Valley Road in respect to the bituminous coal traffic is that it participates in the carriage of coal as part of a through line, and receives, for the distance over its line, less in the aggregate and proportionally than it charges on anthracite carried over its same line the same distance in the same direction.

What it accepts on freight received from another road may indicate the rate at which coal may be profitably transported over its road the same distances in the same direction. But the law favors through carriage and treats the carriage by arrangement over connecting lines the same as if done by a separate line. The carriage was one through carriage from the Snow Shoe to Perth Amboy at through rates, and for reasons already stated the defendant road gave no undue preference to the bituminous traffic by participating in carrying it lower proportionally for the longer distance, except as its charges on anthracite may be excessive.

Having shown that bituminous coal is and for ten or more years last past has been gradually supplanting and taking the place of anthracite in Atlantic coast markets, that the price of anthracite has been maintained and the price of bituminous has declined one-third, the complainants assume that this substitution of bituminous for anthracite in other than domestic uses is "due to the difference in freight rates."

It will hardly be questioned that the substitution of bituminous for anthracite is dictated by reasons of economy

effected through the reduction in the price of soft coal. But it is not proven, nor does it otherwise appear, that this reduction in the price has been effected by or is the result of a like and contemporaneous reduction of freight rates, or that any change has occurred in the relative transportation charges on the two coals.

The traffic and business of the defendant road is mainly anthracite coal. Its main line does not reach bituminous mines, but is laid from tide-water to the anthracite regions, its several branches extending to the different anthracite mines. It is a carrier of bituminous coal incidentally and in connection with other roads, with lines extending from the bituminous to the anthracite region. The quantity of bituminous carried by it is so insignificant in comparison with its anthracite business we cannot suppose it establishes or maintains rates on the two coals for the purpose of depriving its customers of their markets for anthracite, which is its chief business and support. Nor is it to be presumed that by carrying in connection with other lines a few thousand tons of coal which would find its way to the same markets at the same rates over other lines, some of which reach tide-water in the same State where the coal is produced, the defendant intended to or did deprive complainants of a market for their coal of any sizes.

Eleven tons of anthracite no more than equal ten of bituminous in heating and steam-producing power, and there is economy in the use of the soft coal for all purposes to which it is suited. In the last ten years new bituminous mines have been opened and old ones largely extended in the territory from which Atlantic coast markets are supplied. The discovery and use of gas as fuel has to some extent superseded bituminous in markets farther west, and increased competitors for the markets to the east. Multiplying and increasing competitors and sources of supply compel acceptance of lower profits. Nothing connected with bituminous coal mining has made it more expensive than it was formerly, while new inventions and improved appliances have all been favorable to lower cost of bituminous coal producing. These

and possibly other causes have contributed to the reduction of the price of bituminous coal in eastern seaboard markets.

While the tendency of railway transportation is towards lower charges, it has not been very considerable anywhere east of the Alleghanies in the past few years. Except in the increase of business, the change in the conditions on which railway charges are based have not been so marked since 1880 as to justify the assumption of any considerable reduction in rates which were then reasonable. Still, conceding that the use of anthracite for steam and manufacturing purposes has given place to bituminous in consequence of the difference in price, and assuming that the decline in price is in some part the result of reduced rates on bituminous coal, this would not justify any change in the classification or system of rating which would have the effect of raising the rates and increasing the price of bituminous coal to consumers. The lower rates on grain from more distant fields have compelled the acceptance of reduced prices by the grain growers nearer the seaboard. They could retain their markets at a better price if the roads would maintain the rates proportioned to distance, but this would turn fields of the west into waste lands and deprive the east of some part of its daily bread. On grain, roads accept higher aggregate rates, but, measured by distance, or may be by the service rendered, more moderate profits, and the wants of one distant part of the country are thus supplied from the abundance of another. We find nothing of injustice or that is unlawful in this rule, nor any reason why it should not apply as well to the product of the mine as to the product of the field.

The rate from the sources of supply to Perth Amboy being $2.25 per ton on bituminous, the aggregate difference in the rates on the two coals from the respective places of production to Perth Amboy is 65 cents, taking the average on all sizes of anthracite, the aggregate on bituminous being higher by $1.05 on buckwheat, 85 cents on pea, and 55 cents on large sizes. The complaint is that this difference is too small; that, compared with the charges on bituminous, the anthracite charges are too high; and what the complainants

seek in this branch of their case is to obtain such an adjustment of the charges on the two coals as will leave these aggregate differences greater than they are.

Supposing it to be legally determined that the defendant and other carriers of the two descriptions of coals should carry them at the equal rates for the same distances, or per ton per mile. This would hardly accomplish the purpose aimed at by the complainants. Some of these all-rail carriers of bituminous to eastern markets are not carriers of anthracite, and their charges on bituminous could be made without regard to the charges on anthracite to the same markets. Then, again, these markets get some coal through the port of Philadelphia, and are supplied with bituminous through the ports of Maryland and Virginia in sufficient quantities to determine the rates on bituminous to Atlantic coast markets independent of the transportation charges on anthracite over other routes.

The difference in the aggregate cost of transportation to Perth Amboy and through that port to eastern markets as between the competing coals might be increased through higher charges on the bituminous as readily as by means of lower charges on anthracite. The complainants ask relief through lower charges on anthracite, at the same time insisting that the charge on the two coals shall be in proportion to the distance of carriage.

The effect of such a rule, as already shown, is to require increased bituminous rates or to make them higher than they would otherwise be over the longer distances, and thus shut the cheaper coal out of New England and Atlantic coast markets. The effect of any regulation resulting in the increase of rates on bituminous is to close the markets farther east against it and give them to the more expensive anthracite, confined to the limited territory of eastern Pennsylvania, already monopolized. An impost duty has been laid on foreign coal, in part at least, to the end that these markets might be supplied from the abundance of Pennsylvania, Maryland and the Virginias, and any regulation imposing additional transportation or other burdens on bituminous coal to keep it out of eastern markets would seem to challenge the wis-

dom which deposited an abundance of cheap fuel in the east side of the Alleghany mountains.

The ruling price of the steaming or smaller sizes of anthracite is $1 per ton less than the price of bituminous at Perth Amboy and in the markets from which complainants aver they have been excluded. The charges over the Lehigh road in connection with the Pennsylvania road from the Snow Shoe region to Perth Amboy are as high either in the aggregate or per ton per mile as are paid on any bituminous coal mined east of the mountains and carried by rail to New York harbor. They are duly authorized and established, and the said Lehigh Valley Railroad Company by the charges aforesaid is giving no undue preference to the bituminous coal traffic. Nor was the anthracite coal traffic subjected to unreasonable disadvantage in respect to the transportation charges on bituminous from the Snow Shoe region or elsewhere by the Lehigh road, except as its charges on anthracite may be excessive and unreasonable.

In addition to the alleged undue preference in favor of the bituminous coal traffic to the disadvantage of the traffic in anthracite, the complainants aver that the defendant railroad company is giving undue preference to the Lehigh Valley Coal Company by charging complainants more for the transportation of anthracite coal than is charged to said coal company.

In support of this averment of illegal preference in favor of the Lehigh Valley Coal Company, it is shown that the railroad company owns the capital stock, property and franchises of the coal company. The same persons are officers of both companies. The railroad company advances and furnishes to the coal company, without interest, large sums of money necessary to the transaction of its business as a miner, purchaser, shipper and seller of coal. The coal so mined or purchased by said coal company is shipped over said railroad. The complainants and the said coal company send their coal to and sell it in the same markets. Some of the transactions of the said coal company as a buyer, shipper and seller of coal are profitable, others unprofitable.

Both the Lehigh Valley Railroad Company and the Lehigh Valley Coal Company are corporations of the State of Pennsylvania, the Constitution of which State, adopted after the incorporation of these companies, contains the following provision relating to common carriers engaging directly or indirectly in mining or manufacturing articles for transportation over their roads:

"No incorporated company doing the business of a common carrier shall directly or indirectly prosecute or engage in mining or manufacturing articles for transportation over its works; nor shall such company, directly or indirectly, engage in any other business than that of common carriers, or hold or acquire lands, freeland or leasehold, directly or indirectly, except such as shall be necessary for carrying on its business; but any mining or manufacturing company may carry the products of its mines and manufactories on its railroad or canal not exceeding fifty miles in length."

A provision in said Constitution in relation to officers and agents of roads being interested as carriers over the roads of the companies represented by such officers and agents is as follows:

"No president, director, officer, agent or employee of any railroad or canal company shall be interested directly or indirectly in the furnishing of material or supplies to such company, or in the business of transportation as a common carrier of freight or passengers over the works owned, leased, controlled or worked by such company."

The tendency of all such interested management as is indicated by the above constitutional provisions is towards the destruction of legitimate competition, whether the interest is in the carrier or in its officers and those who direct and control it. If railroad companies and those who direct and control their roads were limited to the business of transportation it would take away from both the opportunity to unlawfully prefer themselves as shippers. Disinterested and impartial control is essential to prevent illegal favoritism and abuse of the privileges with which carriers are invested for the benefit of the public.

The railroad companies, including the defendant, produce or control, directly or indirectly, three-fourths of the coal carried by them; by agreement they fix the rate of transpor-

tation, and, by nominal association with the individual operators who represent less than one-fourth of the anthracite output, fix the selling price in the principal market. In the eight years beginning 1880 the prices and rates of transportation of coal delivered free on board in New York harbor have varied nearly in the same proportion. In 1885 and 1886 the price was about $3.40 and the rate $1.40; in 1880 and 1888 the price was about $3.90 and the rate $1.90 and $1.80. For the most part the increased price to the consumer has gone in payment of the increased rate to the carrier, leaving to the operator about the same earnings whether the price of coal is high or low.

Where the carrier is both carrier and producer or operator, as is true of some of the railroad companies, which in their own corporate name are miners, buyers and sellers as well as carriers of anthracite, it matters little so far as relates to its gains and profits how much such a carrier charges itself for carrying its own coal. Nor is it essential to the pecuniary interest of the Lehigh Valley Railroad Company whether it charges its coal company as a miner and shipper very high or very low transportation rates, entitled as the railroad company is to the earnings of both. The case is different with the complainants, who have only so much of the market price as remains after paying for transportation, and suffer the loss of any excessive charges. Besides being competitors, as they are, for the same markets, any excessive charges made or burdens imposed on complainants, and not made and imposed on said coal company, give it unlawful preference and subject complainants to the unreasonable disadvantage of paying more to reach a common market from the same places of production.

It can hardly be questioned that the methods of business might be such, transactions might be so conducted and charges made excessive or otherwise, as between said railroad and said coal company, which would be immaterial to the actual revenues and income of the railroad company, but which would unjustly discriminate against complainants and other shippers.

Whatever opportunity for oppression and abuse may be

afforded, or whatever possible injury might result to the public interest, from the corporate ownership and control, or corporate relations existing between the Lehigh Valley Railroad Company and Lehigh Valley Coal Company, the authority of this Commission extends to such abuses only as are in conflict with the Act to regulate commerce, or some of its provisions. The history of mining operations, and their relations to transportation, in the anthracite regions, as disclosed in the testimony, shows that the carriers, directly in their own corporate names, or indirectly through other corporations, in which the carriers owned the capital stock, became coal miners and dealers as a means of securing the freight. Said Lehigh Valley Coal Company was able to control for the railroad company the transportation of the coal mined from the lands of the coal company and lands leased to it whether such coal was mined by itself or others, as well as large quantities of coal it purchased. That such was the legitimate purpose for which the railroad company organized the coal company was confirmed by the exceptional readiness of the railroad company to disclose the business transactions and methods of the coal company as a miner, dealer and shipper. But the legality of the acts of the railroad company is not determined by its purpose, but depends upon their effect. However well intended the transactions may be, as between said railroad and said coal company, they are unlawful if they effect undue preference or unjust discrimination.

The railroad company, by counsel, insists that the coal company, in pursuance of its chartered rights, may mine, buy, sell and ship coal over said road, as complainants and others engaged in the coal business may lawfully do, and upon the same equal terms and advantages, and none other.

The railroad company advances to the coal company nearly seven millions of dollars with which to transact its business, and for the use of which the railroad company receives no advantage other than such advantages as it gets from carrying the freight of the coal company. The value of the annual use of such advances at five per cent. interest amounts to three hundred and fifty thousand dollars, nearly. This sum

exceeds ten cents per ton on all the coal shipped by the coal company over the lines of the railroad company, and is to that extent an undue preference given to said coal company, to the disadvantage of Coxe Brothers & Co. and other shippers who receive no advances. The advantage of like advances if made to complainants, estimated on their annual shipments, would exceed one hundred thousand dollars. Had the Lehigh Valley road as a means of securing freight made like advances to any other competitor of complainants, whether an individual operator or a coal company in which the railroad company had no interest, it would hardly be contended that such act did not amount to undue preference and unjust discrimination. The fact that the road was interested in the coal company, as the owner of its capital stock, does not make lawful what would be unlawful without such interest.

The railroad company states its outlay, including funded debt, capital stock and other liabilities, at about $73,000,000, on which it claims the right to earn a reasonable income. Conceding that the amount lawfully and properly invested, fixed charges and operating expenses, are important elements in determining the reasonableness of rates, the large sums advanced to its coal company by the railroad company, applied to the reduction of its bonded debt, would so reduce the obligations of the road that lower rates would provide for them.

The cost of producing and delivering coal at New York harbor includes the cost of production and transportation. The cost to the dealer and shipper is the price paid for the coal, and for its transportation. Either miner or dealer, who sells his coal for less than will pay the cost of the coal, after deducting transportation charges, loses in the transaction. Should a railroad company, to secure freight, or for any other purpose, purchase coal at the anthracite mines, carry it to market and sell it at such a price that, after deducting the price paid and expense of selling, would leave the road, as a purchaser, less than would pay its transportation charges, the result or effect of the transaction would be that the road had given itself a lower rate as a dealer than it gave to other

dealers and shippers. The road would be thus giving itself undue preference, and the legal effect must be the same whether this is done directly by the road in its own name, or indirectly in the name of another corporation, of which this railroad company is proprietor. The transactions are frequent in which the coal company, as buyer, shipper and seller of coal, incurs losses after paying to the railroad company the published rate. Every such transaction being in effect the same as if done directly by the road in its own name, is an undue preference to the disadvantage of its customers who sell in the same markets in competition with the coal company. One such transaction was the contract with the Manhattan Railroad Company, which was to continue for two years, and might be and was renewed. By this contract, the coal company was to and did deliver to the Manhattan Company at stated periods, in the years 1887 and 1888, large quantities of coal, upon such terms and at such prices that, after deducting the price paid and expense of marketing the coal, there was left to the coal company a less sum than would pay the published legal rates of transportation.

If we consider this Manhattan sale and delivery as done by the railroad company, then it lost a part of its freight as a rebate to the coal company. Considered as done by the coal company, then the railroad company was a loser to the same extent as the sole stockholder of the coal company. Viewed either way, the railroad company realized less than the full transportation rates paid by the complainants. The dealer, whether the coal or railroad company, that reached the market at the lower rates would have the advantage, and could take the market from, and drive out those who were unjustly discriminated against, and made to pay excessive or higher charges.

When it is made to appear on investigation that any common carrier is unjustly discriminating against any person, company or firm, subjecting them to unreasonable disadvantage or doing anything in violation of the Act to regulate commerce, the remedy which the Act provides is that such carrier be required to cease and desist from such violations. Is this remedy practicable in the case under consideration?

The legal right of the Lehigh Valley Railroad Company to take and hold the capital stock of the Lehigh Valley Coal Company, and the right of said coal company to mine, buy, ship and sell coal is not raised in this proceeding, and if such right were raised and challenged this Commission has no authority to determine it. While the coal company may, in the exercise of its chartered rights, buy and sell coal, certainly this Commission cannot determine the prices at which it may buy and sell, so that the railroad company may realize its established freight rates as carrier and suffer no loss as stockholder. The Commission would be incapable of any such determination if it had any authority to make it. With the market fluctuations in coal as well as other products which may rise and fall from day to day, it is not practicable to determine in advance at what price the coal company must buy that it may sell at such profits as to pay full freight charges.

And while the coal company in the exercise of its chartered rights may acquire and hold mineral and other lands, at its own pleasure, mine or buy coal without restraint as to cost, and sell it at whatever price it may be willing to accept, and is able to obtain, it is impracticable to regulate or cause the discontinuance of the conditions and methods of business, which result in the undue preference and discriminations complained of in this branch of the case.

One allegation of the complainant is that the coal company so conducted its operations as a miner and shipper that its net income from a large mining business was not sufficient to pay freight charges, and that as a result the railroad company, through the operations of the coal company as miner, shipper and seller, as well as through its transactions as dealer, was giving to the coal company undue preference. The cost of mining anthracite coal so varies with different conditions and is so difficult of ascertainment under any conditions, that it is even more difficult to fix and so adjust the operations of the coal company as miner, shipper and seller than it is as buyer, shipper and seller without subjecting individual shippers to disadvantage, and this allegation of the complainant was not insisted upon in the argument.

The relief asked by the complainant for the injustice alleged to result from the relations of the railroad company to the coal company, and its methods of business as buyer, seller and shipper of coal, is not that defendants shall cease and desist from mining, buying, shipping and selling coal, but that complainants, together with others similarly situated, shall have the benefit of a rate ascertained by deducting from the established rate the loss incurred by said coal company in its transactions as a buyer and seller of coal shipped to market over the Lehigh Valley road.

From the time of the enactment of the law to regulate commerce, the business of the Lehigh Valley Coal Company as a buyer, shipper and seller of anthracite coal has been profitable as a whole, though said company has in that time, on various and frequent occasions, suffered losses. Its business is not limited to interstate traffic, but extends to other traffic as well. No separate account is kept, and the business is not so conducted as to render any reliable estimate of the loss on interstate business practicable. In every month some transactions are profitable; others are not. In many months the losses exceed profits, and the amount of loss is different in different months. At times it is different from day to day. Conditions so variable can form no basis for determining rates which must be reasonable, and afford no standard by which to measure the extent to which charges may be excessive. Yet the fact that the railroad company, directly as a carrier and indirectly through its coal company as an operator, so conducts the business of buying, shipping, carrying and selling coal that the road realizes less for transportation than its established rates, affords evidence of the defendant's readiness to take the freight at less than full charges, and justifies the conclusion that the charges to others are to some extent excessive.

In the progress of the investigation, the complaint as to the rate from the anthracite regions west to Buffalo was abandoned, and the reasonableness of the charges from complainant's mines east to Perth Amboy is yet in dispute. These charges as complained of were $1.80, $1.40 and $1.20, according to sizes, averaging on all $1.70 per ton. As

reduced, pending the investigation, they are $1.70, $1.40 and $1.20, and the average is $1.60. It is the question of the alleged unreasonableness of these lower rates that we are to determine.

In the closing argument on behalf of the road, counsel said the railroad companies, without the interference of the Commission, "will make a reduction in their rates of freight. Such a reduction will show a rate per ton per mile which will compare favorably with the lowest charged according to the tables the petitioners have produced." Since this assurance was given, the railroad companies, including the defendant, have made an average reduction of ten cents per ton. The tables produced in evidence by the petitioners show that, as reduced, the rates are yet twenty-five cents per ton on the larger sizes, and twenty cents per ton in the average on all sizes, higher than the rates which were in force for the two years and more next before the Act to regulate commerce took effect, and that at various times previous to 1881 the rates were lower than the average for the two years next before the Act was in force.

In the last ten years, the market price of coal has not increased. The cost of production has been maintained or increased, and the cost of railroad service from the anthracite region to New York harbor has declined, as the result of the increased volume of business.

The aggregate charges of the defendant company on other heavy and low-grade freight, including iron ore, pig and other iron, of greater value, carried the same distances, and its proportionate charges for such heavy and low-grade freight, for shorter distances, are less than its charges on coal.

The defendant company estimates and reports its expense, or cost of service, to be eighty-eight cents for every dollar earned, in carrying all other freight, and fifty-six cents expense per dollar earned in carrying coal.

Under the rules of classification generally prevailing miscellaneous or general merchandise is rated considerably higher than coal—while the charges of the defendant are considerably more on coal, the least expensive freight, than on its more costly general freight.

These facts lead us to the conclusion that the rates in question are unreasonable.

After submitting the proposed findings of fact for the consideration of the Commission, counsel for complainants in his concluding arugment said:

"As to the unreasonableness of the charge, we ask the Commission to find that the rate of $1.80 is unreasonable within the statute. We do not ask or care about your honor's establishing any particular rate." . . . "There are a great many ways in which these coal rates can be determined without fixing any arbitrary or inflexible standard. It could be by a sliding scale depending upon the price of coal. You could determine first the cost of mining coal and then the cost of railroad transportation. . . . Another way to establish the rate would be at some fixed proportion of the average of the selling price of coal at tidewater. . . . If they (the carriers) are informed that their present rate is unreasonable they will then meet the individual operators of their districts in consultation and I am sure some amicable arrangement will be reached by which both parties can make money."

Complainants' counsel here expressed the belief that the coal traffic afforded a fair profit to both producer and carrier; that to secure an equitable division of the profits it was only necessary to declare the charge made to be unreasonable and the parties would come together and fix the proper rate themselves.

Counsel for the road said in reply:

"That will not do. If this Commission says that the present rates are unreasonable they must say so because there is a different rate they have determined to be a proper one. It will not do for you to make a general finding and to say: 'The present rates are unreasonable, but we do not know what they ought to be. We can not fix them for you. You must agree upon them amongst yourselves.' If unreasonable, say to what extent they are unreasonable; whether to the extent of a cent, or of many cents, or of a dollar, a ton. Would it be proper for you to lay down an abstract principle that would lead to endless confusion in the application? That would put all at chaos. For Heaven's sake do not ever make the matter of the proper rates for carrying coal one to be regulated in a conference between the carrier and the shipper. If you have been convinced by these petitioners that the present rates are unreasonable and unjust, then say what the rates ought to be. This will be your duty. I do not wonder that Mr. Gowen shrinks from asking you, with the imperfect materials he has presented, and with the information he has failed to furnish, to say what these rates shall be."

Having declared the rates in question to be unreasonable,

if we should act upon the suggestion of counsel for complainants and fix upon none which may be properly charged, the case before the Commission would be at an end when the railroad company was notified that its rates were found to be excessive and must be modified. The Commission having prescribed no measure of reduction, any modification made in good faith would be a compliance with the required modification, yet it might be unsatisfactory to complainants and other operators and fall short of what the law requires. Then the occasion would be presented when the operators and carriers might meet and amicably arrange what the charges should be in accordance with the suggestion of complainants' counsel.

In such a meeting or conference of operators and carriers, where possible conflict of interest and opinion could arise, it might and most likely would occur that no satisfactory arrangement would be reached, and another application to the Commission would be necessary to declare the reduced rates still unreasonable. This process would need to be repeated until the legal rate was established by successive reductions, made in compliance with a series of determinations of the Commission that the rates were unreasonable.

In the case under consideration suppose the facts to be as claimed, that the charges are excessive, as much or more than 50 cents. Under the rule suggested by complainants' counsel, when the rate was ascertained to be unreasonable it would be so declared and left with the shipper and carrier for amicable arrangement. If for any reason no scale of charges was agreed upon the rate would remain for determination by the carrier whose rate is challenged. Under such a rule applied to the subject of this complaint five several proceedings would be necessary to establish the reasonable rate if in each proceeding the carrier deemed a 10-cent reduction sufficient. If, impressed with the belief that the existing rates were not exorbitant, the carrier should attempt compliance with the Commission's conclusion that they were excessive by making the least possible reductions, repeated and continual applications would be necessary to correct a single abuse. Certainly Congress intended no such absurd-

ity as this, but, as insisted upon by counsel for the road, when we have been convinced that rates are unjust it will be our duty to say what they ought to be, or at least to determine upon some rate, any charge in excess of which would be unreasonable. If the duty of the Commission in respect to unjust and unlawful rates ends when it has been convinced that rates are unreasonable, and so decided them to be, and for any reason the Commission may not determine what are, as well as what are not, reasonable, the regulation provided by the statute begins with complaint and ends in confusion.

The Act to regulate commerce, which declares every unjust and unreasonable charge to be unlawful, and requires its provision to be enforced by the Commission, confers the power to determine, and imposes on the Commission the duty of determining, what are the reasonable rates which the charges may not exceed, as well as what are unreasonable.

There is, as we believe, no unbending rule by which to determine what common carriers may reasonably charge for their services, and the reasonable rate must be ascertained from the facts of the particular case. To be reasonable, rates must be just, both to the parties immediately interested and to the public. Conceding that counsel correctly indicates the object of railroad traffic to be the profits derived from it, the lowest compensation of the road cannot be less than will enable it to render the service; otherwise the freight will not and cannot be carried. The highest must not be more than the shipper can afford to pay; otherwise the freight will not be shipped. Reasonable rates are within these minimum and maximum limits, and must be determined upon the circumstances of each particular case.

Complainants' counsel says they may be rightly determined upon a sliding scale depending upon the price of coal, or established at some fixed proportion of the average of the selling price of coal at tide-water—the cost of mining coal having first been determined and then the cost of railroad transportation.

The roads have the same anthracite rates eastward, and own or control much the larger part of the coal they carry. The operators or their sales agents establish the same circu-

lar prices and the roads having the majority interest represented by such operators or agents could establish the rates by determining the price on which they were to be apportioned.

The suggestion of counsel that the cost of mining and of transportation be separately ascertained is based on the assumption that the coal business is profitable, and is evidently made with a view to an equitable division of the profits of the coal traffic between the producer and carrier. It would seem that the defendant road can offer no reasonable objection to such a division, provided the share of profit apportioned to it added to the expense of transportation affords a fair compensation for the service rendered. The average price of coal delivered at New York harbor for the years 1880 to 1888, inclusive, was about $3.86 per ton. The cost of mining, including depreciation and royalty, was and is about $1.85. The cost of transporting coal ascertained from the report of the defendant company for the year 1887 was about 85 cents; the cost of selling, 12 cents. Deducting these several items of cost, amounting to $2.82, from the price, $3.86, and a profit is shown of $1.04 on the ton to be apportioned between the miner or operator and the carrier. One-half of this profit added to the cost of carriage would fix the aggregate earnings at more than half as much more, or about 60 per cent. above the amount required to pay operating expenses for coal carriage, and would establish the transportation rate at $1.37 per ton, leaving to the miner a profit of 52 cents on the basis of the average prices since 1880. This profit of the miner is dependent upon, and will fall off with, the market price of the coal, which will decline with the reduction in rates, a fact established by the testimony of the president of the Lehigh Valley Railroad Company and the president and general manager of the Lehigh Valley Coal Company, and confirmed by the result of previous changes in transportation rates. Such a division of profits or proceeds, after deducting cost of mining, selling and transportation, would be mainly arbitrary, and the rate thus established would exceed the cost of transportation much more than the average of such excess of transportation cost over

all other roads on all classes of business. But the rate, on whatever basis determined, must be fairly remunerative to be lawful, and any division of the profits or net proceeds of coal after deducting costs, including transportation, as a means of ascertaining reasonable rates, needs the justification of supporting facts.

The net earnings of all the roads are from 30 to 35 per cent. of the gross earnings; that is to say, of all the earnings of all the roads about $66 of every $100 is required to pay the expenses of earning it, and the average rates on all the roads are 50 per cent. higher than would be required to earn operating expenses only. Why a rate of 50 per cent. in excess of the requirements of operating expenses, the average for all other roads, is not sufficiently compensatory for the Lehigh Valley is not explained in the testimony or argument.

The rate established on this basis of adding 50 per cent. to 85 cents, the expense of carriage of coal, would be $1.28, and in comparison with the rates made on this basis the rate of $1.37 established by adding one-half of the coal profit to the cost of service or operating expenses would still be above the reasonable rate. The rate of $1.28 is estimated on the average for coal of different sizes and values, while the rate of $1.37 is estimated on that which pays the highest rate and sells at the best market price. If for any reason it be assumed that coal charges should be based on the expense of transportation of all the business of said road, which is 63 per cent. of the earnings from such business, and not on the expense of coal transportation, which is 56 per cent. of coal earnings, the rate would be about $1.40 per ton, or 93 cents per ton expense and 47 profit on income on the investment. But the fact is not overlooked that there are too many elements of uncertainty in any estimate of the cost of service and of mining to justify their unqualified use as controlling facts in determining reasonable transportation charges.

One of the complainants, as a witness, said in answer to questions:

"I began going in the mines when I was nine years old and ever since that time I have given my attention to it. I graduated in the University of Pennsylvania, and after that I studied mineralogy, etc. I was six months with Professor Leslie, State Geologist, on the Geological Survey. I then spent between four and five years in Europe, partly in the mining school at Paris and partly in a mining school in Germany, and I visited all the principal mines of Germany, France, Belgium, and England, and since my return I have been engaged in mining coal in and around Drifton, Pa. . . since 1865."

"I was two years President of that Society." (Mining Engineers).

"I would like to have the right to state before the Commission that in giving this, the cost of mining coal in the Lehigh regions, I am undertaking the most difficult problem in the anthracite business. I mean this question of determining the cost of coal; and if you gentlemen will excuse me, I would like to make a preliminary statement. . . . For the last twenty years I have been trying to find out, and I cannot honestly say to-day what it does cost. . . . I don't think you would get any two to agree." (Of a dozen experts in coal mining put to calculate the cost per ton at the breaker).

This complainant, when testifying before a committee of Congress as to a table giving details of the cost of coal mining, said:

"Now, while the above table costs are divided, it is probably ı or any ı e ored to make out, as nearly as I cou a table givi aver ıor a numı of mines with which I am familiar, but you n un ı that in two mines would these two items of expense ee. In s mines lit pumping is required, and in others the cost oı pı ; very great. In some the cost of timbering is enormous; in ı ll. In some mines the cost of preparation is very gr owı to t s found in the vein; so that, although it is probable s mines where the cost of producing is as low as] ton, ı where it costs over $2, and the increase in c y be in one oı items mentioned above." (In the tables, about w witness v testifying).

A trained, educated and conscientious expert in railroad transportation, if required to give the expense or cost of carrying coal or any single article of freight over a road doing a general business, such as is done by the Lehigh Valley Railroad, would find the same difficulty as said complainant did when asked to state the expense or cost of mining a ton of coal.

That the operating expenses on all freight was 63 per cent. of the gross receipts, while the operating expense or cost of

carrying coal for 1887 was 56 per cent. of the gross receipts from the coal traffic, leaving to the road $44 of every $100 earned after deducting costs of carriage, appears from the annual report of defendant railroad company to its board of directors for that year. That the cost of carrying a ton of coal from the Lehigh and Mahanoy regions was 85 cents, being 56 per cent. of the average rate for that year, is derived from the same report. The annual report of said company for 1888, made since the commencement of this proceeding, and which is in evidence, does not contain these facts or the statement from which they may be derived for that year. No testimony was offered modifying the annual report of 1887, and it may fairly be assumed that, in respect to its earnings, expenses, and other matters pertaining to the subject of this complaint, said report is as favorable to the railroad company as the facts will reasonably justify.

The lowest anthracite rate which has prevailed in the last fifteen years was in 1879, when it was for seven months as low as $1 per ton on all sizes. For the next five years, it was for a short time as low as $1.40, and much of the time as high as $1.90.

In the two and more years from February, 1885, to April 4, 1887, the day next before the Act to regulate commerce took effect, the highest rate which was in force on the large sizes was $1.57 per ton, and the lowest $1.37, which prevailed without change a year and more. The average rate for this period, exceeding two years, on the highest and most valuable sizes, was $1.45. On the lower grades the rate was for one-half of the time as low as $1.17, but part of the time as high as $1.37, and the average rate on all sizes and descriptions during this period of two years and more next before the Act took effect was $1.40 per ton.

The primary and legitimate purpose for which railroads are constructed and operated by their proprietors is the profits and gains of the business. When, therefore, a railroad company voluntarily accepts and carries freight upon terms made by itself, it furnishes evidence tending to prove that such terms are profitable. When such terms or rates of

charges are of long continuance, or are recurred to and adopted as often as necessary to secure business, the evidence is more convincing that the business, at such rate of charges, is remunerative. The rate of $1 per ton, which was maintained seven months of the year 1879, on all anthracite from the Lehigh and Mahanoy regions, had not been in force before that year, nor has it been since. The coal is carried by the road at an expense of about 85 cents per ton, as ascertained from its own report, which is nearly six mills (5.7) per ton per mile for 149 miles, the average or group distance from the mining regions to the Jersey coast.

The full charges for operating expenses and profit or net earnings made by the Lehigh road on ores and some iron, both ordinarily more expensive freights than coal, is 6 mills per ton per mile or less. Still, in view of the terminal costs included, the expense of transporting coal stated to be 85 cents per ton may be accepted as approximately accurate. The rate in force in 1879 is but 15 cents, or less than 18 per cent. in excess of this expense, as compared with about 50 per cent., the average difference between the expenses and earnings for all the roads of the country. We do not believe that charges yielding but 15 cents a ton, or less than 18 per cent. more than costs of moving the freight, will yield a fair return on the amount of investment in the road, or that the rate of $1 in the average or on all sizes which prevailed in 1879 would be a reasonable rate under present conditions.

A rate established on the basis of the average relation between operating expenses, 66 per cent., and income, less operating expenses, 33 per cent. of earnings, would be 85 cents for expenses and 43 for income on capital invested, aggregating $1.28, which is lower than any rate in force previous to or since 1879. The rate for the year 1886 averaged on all descriptions of anthracite $1.34 per ton, and the average for a period exceeding two years immediately preceding the enactment of the Interstate Commerce law was $1.40. The acceptance of rates averaging for so long a time $1.40, and even a lower rate for more than a year without change, affords strong presumption that it is fair compensation for the service rendered; and when, as in this case, an average

scale of charges has prevailed more than two years and up to the day when the law requiring rates to be reasonable became operative, and no evidence is produced to show why such rates would not be just, the only conclusion we can arrive at is that they were, when in force, and still are, sufficient and reasonable.

This conclusion is fully warranted by the annual balance sheets of the railroad company, which show that in 1886, with an average rate 6 cents per ton less, said company met all its obligations, including interest on its bonded debt and "guaranteed bonds and stocks," largely exceeding the whole cost of its road and equipment, and paid $1,331,531 dividend on its capital stock, which also largely exceeds the whole cost of the road and equipment. In 1887, when its rates averaged $1.49 after meeting all its obligations, said company made a dividend of five per cent. on its capital stock and could have increased its dividend to more than 6 per cent., but instead carried a surplus of $410,791 to the profit and loss account. The coal tonnage of said railroad company in 1888 was more than a million of tons in excess of that of 1887. Its business and income were larger in 1888 than in any previous year. The increasing population and growing industries on its main line and branches and in the districts it serves secure to it a constantly-increasing traffic and revenue. The transportation service is thus made less and less expensive and warrants more moderate charges.

In the more than two years immediately preceding the enactment of the Interstate Commerce law, during which time the average rate on all descriptions of anthracite was $1.40, it was on the larger sizes $1.44½, and on all the smaller sizes $1.24½. In 1888 the lower grades were divided and rated under two descriptions, thus making three different classes of anthracite, the prepared and sizes larger, the pea, and the buckwheat and culm. When the arrangement was in two classes the difference in charges on pea and lower grades was at times 15 cents, but usually 20 cents, less than on the grades above pea. After the division into three grades or classes the charges were for a time on the higher grades as much as 40 cents above pea, the best of the smaller

sizes. As arranged by the reduction made subsequent to the hearing in the case the charges on pea are 30 cents less than on the more valuable, and 20 cents more than on the sizes less valuable than pea, the difference between the highest and lowest being 50 cents per ton.

It thus appears that as the price of bituminous coal has declined and its use relatively increased in eastern markets, the carriers have found it more and more necessary to so adjust their rates on anthracite as to make them proportionally less on the steaming or smaller sizes. In so adjusting the proposed reduction to the average of $1.40 it is only prudent to maintain, as far as may be, the relations in the charges on the several sizes or qualities of coal which the carriers with their growing experience found it necessary to establish. To maintain these relations approximately with the highest rate at about $1.45 as it was when the average was $1.40, the lowest would be too nearly consumed in the expense to afford any reasonable profit. Still with the increasing supply of bituminous the smaller or ordinary steaming sizes of anthracite must reach the market at the lowest possible cost. The practicable and necessary adjustment of the rates on such eastbound, short-distance traffic, which we have determined upon as reasonable per ton of 2240 pounds from the collieries of complainants to Perth Amboy, is, on the prepared and larger sizes, $1.50; on pea, $1.25; on buckwheat and culm, $1.05.

The charges so adjusted on the several grades or sizes of coal and applicable to complainants' shipments to Perth Amboy are not meant to affect or to establish the relation of the charges made or to be made on Buffalo and longer-distance shipments where lower anthracite rates are maintained than are or may be in force on tide shipments.

The rates now determined upon are believed to be liberal for freight so inexpensive as coal, and if, after trial, it is found that they are too high, we will not hesitate to require further reductions; but in view of interests so vast as the eastbound anthracite traffic which may be affected, we do not now feel justified in determining upon a lower scale of charges.

In their petition and proposed findings complainants assume that the charges they may reasonably be required to pay must be based on the average distance from their several collieries to Perth Amboy, 135 miles, and not on the average or group distance from the Lehigh and Mahanoy anthracite fields, 149 miles, in accordance with the practice long in use. It is often impracticable to establish different rates on the same commodity from practically the same locality to the same market. That under such circumstances some grouping is not unreasonable, complainants concede by asking that they may be charged on the average distance from their seven collieries, no two of which are the same distance from Perth Amboy. One is as near as 128 miles, while another is as far as 145 miles. The reasons which make necessary and justify the same charges from the several collieries of complainants would seem to justify like charges from all the collieries in the same coal fields and practically the same locality. The objection which is frequently urged against the equal charges from collieries or places of production variously distant, is that such charges occasionally deprive producers of their natural advantages resulting from proximity to markets. This objection can have no application to questions to be determined in this proceeding. The complainants' mines and collieries are situate in the Lehigh regions, the nearest to eastern markets, and the charges are less to the east than the charges from the more distant Wyoming region, though not adjusted in proportion to distance. On western shipments all the anthracite fields are grouped together, and given the same rate, of which the complainants get the advantage, their collieries or some of them being among the most distant from western markets, and they suffer no undue disadvantage from the system of grouping in use under which their charges east are based, on a distance 14 miles in excess of the average from their collieries, while they have the advantage of the same rates on western shipments paid by their competitors located from 60 to 100 miles nearer to western markets.

Much stress was laid by defendant on the expense or cost of terminal service, incident to the transportation, as a justi-

fication of high rates. After most careful investigation we found it to be about 30 cents, or two mills per ton per mile, on shipments from the Lehigh and Mahanoy fields to Perth Amboy. This would leave to the road for the additional expense of transportation a trifle less than 4 mills per ton per mile if the entire terminal expense was included in the cost of transportation, a part of which terminal expense is included in the plant or investment. The charges of the Lehigh Valley Railroad Company under its reduced rates on anthracite coal from the Lehigh region to Buffalo are $2, or 6 mills per ton per mile, and include the same terminal expenses at the mines as are incurred on Perth Amboy shipments. Said Lehigh Valley Railroad Company transports the coal carried by it to Buffalo over the lines and tracks of the New York, Lake Erie & Western Railway Company, for which said Erie Company receives one-half of the freight charges. There is thus left to the defendant road but three mills per ton per mile for its transportation services, including terminal costs and profit or income on investment. When the operating expenses, which include the cost of collecting, weighing and making up into full train loads at Packerton, are compensated for, the haul thence to Perth Amboy is but one hundred and twenty-five miles, and its cost is considerably reduced. The scale of charges determined upon as reasonable are sufficient to meet all the expenses and obligations of the railroad company, including dividends on the capital stock, or a reasonable rate of income on the alleged investment. The terminal charges being thus provided for, their exact sum and apportionment, as between the expense and net profit account, is not essential to the ascertainment of the proper aggregate rates. An order will be issued requiring said Lehigh Valley Railroad Company to cease and desist from making any charges after April 20th, 1891, in excess of the rates determined upon.

THE DELAWARE STATE GRANGE OF THE PATRONS OF HUSBANDRY *v.* THE NEW YORK, PHILADELPHIA & NORFOLK RAILROAD COMPANY, THE DELAWARE RAILROAD COMPANY, THE PHILADELPHIA, WILMINGTON & BALTIMORE RAILROAD COMPANY AND THE PENNSYLVANIA RAILROAD COMPANY.

1. For a special service by a carrier, such as the transportation of perishable freight, requiring quick movement, prompt delivery at destination, special fitting up of cars, their withdrawal from other service, and their return empty on fast time, all involving greater expense to the carrier, a higher rate than for the carriage of ordinary freight is warranted by the conditions of the service and is reasonable and just.

2. But the higher rate for a special service should bear a just relation to the value of the service to the traffic, and is not wholly in the discretion of the carrier. While a carrier should be fully compensated, the public interests require that the traffic should not be rendered valueless to the producer, if the charges of the carrier have such an effect and can be reasonably reduced.

3. The requirement of the statute that all rates shall be reasonable and just involves a consideration of the commercial value of the traffic, and implies that rates should be so adjusted that producers of traffic as well as carriers may carry on their pursuits successfully, if practicable for both and without injustice to the carrier. The public good requires what is plainly the spirit of the law, that the transportation interests are not alone to be considered, but that in the just exercise of regulation care should be taken that the lawful and necessary occupations of citizens are not unjustly burdened.

4. The complaint was that the defendants' charges for the transportation of specified perishable articles of truck farming from stations on their lines of railroad to Jersey City and Philadelphia were excessive and unreasonable, and that the charges were higher for the shorter distances from their stations on the Peninsula in Delaware and Maryland than for the longer distance from Norfolk, Virginia. It was found that the charges on certain articles specified from stations on the Peninsula were excessive and a reduction was ordered. The reduced rates are, however, in many cases still considerably above the rates on the same articles from Norfolk, and, the showing not being sufficient to enable the Commission to determine satisfactorily how far the lower Norfolk rates were justified by the differences in the conditions and circumstances, that subject is left for future consideration.

Hearings at Dover, Delaware, September 20 and 21, and at Washington, D. C., October 9 and 10, 1888.—Case argued February 26, 1889.—Negotiations for amicable settlement carried on at intervals until May, 1890.—Decision filed April 13, 1891.

Levi C. Bird and *George H. Bates*, for petitioners.
T. H. B. Brown, for N. Y., Phila. & Norfolk R. R. Co.
James A. Logan and *George V. Massey*, for Penna. R. R. Co., Phila., Wil. & Balto. R. R. Co. and Delaware R. R. Co.

REPORT AND OPINION OF THE COMMISSION.

BY THE COMMISSION:

The complaint in its final form, as amended, avers:

First. That the respondents have made unjust and unreasonable charges for services rendered, especially in carrying perishable freight over their roads, and for specification particularizes—

(A). The rates to Jersey City, Philadelphia and Wilmington from all stations on the New York, Philadelphia & Norfolk Railroad between Charles City and Delmar and between Princess Anne and Crisfield, on berries, all perishable freight except peaches and vegetables in barrels, N. O. S., apples, peas and other vegetables in barrels, and potatoes in barrels.

(B). The rates to Jersey City and Philadelphia from all stations mentioned in the freight tariff schedule dated May 1, 1887, entitled "P., W. & B. R. R. Market Car Tariff," all berries, all perishable freight except peaches, berries and vegetables in barrels (except potatoes), N. O. S., apples, peas and other vegetables in barrels, per barrel, and potatoes in barrels.

(C). The rates on peaches to Jersey City and Philadelphia from all stations mentioned in the freight tariff schedule dated June 28, 1887, entitled "P.,W. & B. R. R. Peach Tariff. By Special Fast Trains."

Second. That the respondents have violated the fourth section of the Act to regulate commerce by charging shippers at

Norfolk, Va., lower rates for carrying produce to the New York, Philadelphia and Jersey City markets, to wit: berries, potatoes, peas and other vegetables, oysters and melons, than they charge shippers along the lines of their roads on the Peninsula for carrying similar products to the same markets over a much shorter distance.

Third. That with respect to perishable freight the respondents do not furnish the efficient train service and speed, and proper and careful handling of the goods, and prompt delivery or opportunity for delivery at Jersey City and Philadelphia, which the nature of the business requires and the necessity for which has been set up by respondents as justifying the high rates of freight charged by them, and particularizes delays in the delivery of freight at Jersey City and Philadelphia during the peach and berry season of 1887.

The respondents, in brief, deny that the rates are unreasonable in view of the nature and expense of the service, and allege water competion at Norfolk as a lawful justification for the lower rates from that point.

Since the filing of the complaint and during the seasons of 1888 and 1889 material improvements have been made in the service in respect to the time of delivery of the products carried, at Philadelphia and New York respectively, giving the shippers the benefits of seasonable arrival at the markets; and it is believed, and substantially conceded by the complainants, that the carriers have made reasonable efforts to facilitate shipments and to remove as far as practicable any just grounds of complaint in that behalf. No findings of fact are therefore made on this point, and the findings are restricted to the two remaining questions of the reasonableness of the rates from the Peninsula to Philadelphia and New York and the discrimination, on the ground of water competition, in the Norfolk rates.

The material facts are as follows:

The rates in effect in 1890, being substantially the same as those charged in 1888, and the distances, from different points in the Peninsula of Delaware to Philadelphia and New

York (or Jersey City, rather) by the Philadelphia, Wilmington & Baltimore Railroad, and the New York, Philadelphia & Norfolk Railroad, respectively, all operated by the Pennsylvania Railroad Company under leases or contracts for the purpose, are as follows:

From	To	Miles.	Berries, per 100 lbs.	All perishable freight except peaches, berries and vegetables in bbls., N. O. S., per 100 lbs.	Potatoes, in bbls., per bbl.	Kale, spinach, radishes, cabbages and lettuce, in bbls., per bbl.	Apples, peas and other vegetables, in bbls., per bbl.	Peaches. C. L. of 18,000 lbs. per car.	Peaches. L. C. L., per 100 lbs.
Milford	Jersey City	190	$.66	$.65	$.40	$.50	$.50	$97.00	$.75
	Philadelphia	99	.43	.31	.30	.30	.30	57.00	.44
Felton	Jersey City	175	.64	.60	.60[1]	.50	.50	91.00	.71
	Philadelphia	84	.35	.29	.29[2]	.26	.26	50.00	.39
Dover	Jersey City	165	.63	.60	.40	.50	.50	88.00	.68
	Philadelphia	74	.31	.28	.24	.24	.24	46.00	.34
Wyoming	Jersey City	168	.63	.60	.40	.50	.50	90.00	.70
	Philadelphia	77	.32	.28	.24	.24	.24	47.00	.35
Marion	Jersey City	246	.74	.60	.40	.20	.50	113.00	.88
	Philadelphia	155	.56	.38	.35	.20	.40	77.00[3]	.61[4]
Cape Charles	Jersey City	310	.75	.60	.40	.20	.50	120.00[5]	.90[6]
	Philadelphia	219	.60	.40	.35	.20	.40	85.00[7]	.65[8]

Rates in 1888: [1]40 cts. [2]26 cts. [3]$78. [4]62 cts. [5]$111. [6]85 cts. [7]$74. [8]57 cts.

The contemporaneous rates from Norfolk to New York and Philadelphia in 1888 and 1890 (the rates to both places being equal), are as follows: On kale, spinach and cabbage, per barrel, in 1888, 20 cents, and in 1890, 15 cents; on all other vegetables, per barrel, in 1888, 25 cents, and in 1890, 23 cents; per half-barrel, 13 cents in both 1888 and 1890; and per bushel box, 10 cents, also in both years. The rates on berries are shown in the following table:

From	To	Miles.	1888. Per 100 lbs.	1890. Per Crate. 60 qt.	48 qt.	45 qt.	36 qt.	32 qt.	24 qt.
Norfolk	New York and Philadelphia	346 255	$.60	$.50	$.48	$.45	$.36	$.32	$.24

The rates from the Peninsula on peaches, berries and other perishable freight destined for New York City are made to

Jersey City, and the traffic is there delivered by the carrier, to be trucked at the expense of the shipper to the places of business of the consignees in New York. The expense of trucking, including the ferriage, is four cents a basket for peaches, but the amount charged on berries does not distinctly appear from the evidence. There is also a commission paid by the producer, of 10 per cent., for the handling and sale of the products at the markets.

The berry crates are of different sizes, the largest containing 60 quarts, and weighing, including the crate, 100 pounds. The smaller sizes contain, respectively, 48, 45, 36, 32 and 24 quarts. The 32-quart crates weigh 50 pounds each, and about 300 of them make a carload. The peach baskets hold about five-eighths of a bushel, containing about 150 peaches and weigh about 34 pounds each. Five hundred and thirty baskets, being nine tons weight, make an ordinary carload, and 750 baskets make a load for a "Jumbo" car. A bag of peanuts contains four bushels, and weighs 100 pounds.

In the case of carload shipments the freight is loaded into the cars by the shippers at the point of shipment, and unloaded by the consignees at Philadelphia and Jersey City. The rates charged by the carrier for carloads are exclusively for transportation, without the expense of loading or unloading.

A car called a "market car" is used in the earlier part of the movement of this perishable traffic. A "market car" is described as one in which different persons may ship their freight and the freight may consist of different articles, such as strawberries, peaches, potatoes and other perishable freight. When the freight is offered in sufficient quantity for a carload it is carried in carloads. The rate by the market car is higher than by the carload. A carload of peaches according to the tariffs of the respondents, is 18,000 and 24,000 pounds, and the notation in the tariffs is that the rates given are higher than the regular freight-train rates on account of the extra fast-train service.

The shipments of products from the Peninsula occur in the following order: Asparagus in the latter part of April, followed first by strawberries, then by raspberries, next by

blackberries, and finally by peaches and apples. Berry transportation continues about two weeks. Peach transportation begins early in August and continues for about six weeks. When the shipments of berries and fruit first commence, and the quantities offered are less than carloads, they are carried in market cars with other perishable freight.

The berries and other perishable freight taken from Norfolk, according to the testimony, are delivered by the carrier on the New York City side of the harbor. Only a trifling amount of peaches is shipped from Norfolk, but the berry shipments and the shipments of other perishable articles are large.

During the last few years a considerable amount of peaches and berries has been shipped from the Peninsula by express to Boston and other New England points. The rate by express is $2.40 a hundred, which includes cartage, and of this rate the railroad gets 70 per cent.

Considerable testimony was given in relation to the expense of the cultivation of berries and peaches, but it is difficult to arrive at exact results from the evidence. Strawberries were said to cost six cents a quart for cultivation, and the production to be about 15,000 quarts to an acre. The cost of peach cultivation was said to be about 35 cents a basket, and that the yield for a good crop is about a basket of peaches to a tree, with 100 trees to an acre. The average life of an orchard of peaches was given at ten years, and the average cost of land at from $75 to $150 an acre, but the depreciation of the land during the ten years is about one-half.

During the last two or three years some changes have taken place in the methods of disposing of the peach crop. In some instances the peaches are sold at the railroad stations to purchasers from northern cities. In other instances the growers evaporate their peaches, and in others again they are canned. The cost of evaporation is put at about 10 cents a basket when unpared, and at from 15 to 25 cents a basket when pared.

The testimony of several producers was to the effect that the business of cultivating peaches is unprofitable, and that the growers, as a rule, are not paid for their outlay for pro-

duction and transportation by the prices received, but sustain loss. Others, on the contrary, gave testimony that the business was profitable. The selling price of peaches in the northern markets varies so much, owing to supply and demand and also quality, that an average price can scarcely be given. Fancy peaches sometimes sell for $1.50 or $2 per basket, while others have sold as low as 30 or 40 cents a basket.

As supplementing to some extent the oral evidence given on the hearing, resort has been had to market reports to ascertain so far as possible the actual prices of Delaware and Maryland peaches in the New York market. These reports show from day to day the lowest and highest prices of the fruit, based on certain trade classifications, but obviously, in the absence of additional facts and explanatory evidence, can have no controlling weight. A few examples of these prices are given at the dates when the crop probably was moving most freely:

Date, 1889.	Variety.	Quality.	Price per basket.	Average price.
Aug. 15	Yellow	Extra	$1.12 to 1.50	
	"	Plain	.75 to 1.00	
	Red	Extra	1.00 to 1.25	
	"	Plain	.70 to .90	$.89 to 1.16
Aug. 16	Yellow	Extra	1.25 to 1.50	
	"	Plain	.80 to 1.00	
	Red	Extra	1.00 to 1.25	
	"	Plain	.70 to .90	.94 to 1.16
Aug. 17	Yellow	Extra	1.12 to 1.37	
	"	Plain	.60 to .90	
	Red	Extra	1.00 to 1.25	
	"	Plain	.60 to .80	.83 to 1.08
Aug. 22	Yellow	Extra	1.00 to 1.37	
	"	Plain	.60 to .80	
	Red	Extra	.90 to 1.12	
	"	Plain	.50 to .70	.75 to 1.00
Aug. 24	Yellow	Extra	.80 to 1.00	
	"	Plain	.50 to .75	
	Red	Extra	.75 to .90	
	"	Plain	.45 to .75	.62 to .85

Aug. 29, 30 and 31...Yellow	Extra	1.00 to 1.25	
"	Plain	.70 to .90	
Red	Extra	.90 to 1.00	
"	Plain	.60 to .75	.80 to .97
Sept. 3 and 4.....Not stated	Extra	.80 to 1.00	
	Plain	.65 to .75	
	Common	.50 to .60	.65 to .78
Sept. 7.....Not stated	Extra	1.00 to 1.12	
	Plain	.70 to .80	
	Common	.60 to .65	.71 to .86

The reported prices both before and after the dates specified were higher. But these market reports, while indicating the maximum and minimum prices of the classified qualities, do not aid in arriving at the average price for all the sales made, for the reason that the quantities of the different varieties are not reported. Accurate results to show the relation of the rate to the market value of the article carried necessarily require a showing of the general average price of the entire quantity of the different varieties sold. A proper test of the reasonableness of a rate, so far as commercial value may be considered in connection with the rights of the carrier, can only be furnished by the average, ordinary market price of the article. Exceptional conditions, or extreme high or low prices, cannot furnish a just basis of a general rule for rates.

The complainants show that the cost to the producer, all things included, of a basket of peaches delivered to the carrier, is about 35 cents; that the freight charge varies according to locality from 18 to 24 cents, averaging about 21 cents; that the ferry charge from Jersey City to New York is four cents; making in all about 60 cents a basket to place the fruit in the market. A commission of 10 per cent. on the selling price is paid when sold on commission, which is also to be added. The margin of profit must necessarily be very small.

The railroad lines controlled and operated by the Pennsylvania Railroad Company on the Delaware Peninsula traverse the Peninsula in various directions. The Philadelphia, Wilmington & Baltimore road is part of the main line to

Washington and the South, with branches reaching southerly into the Peninsula. The Delaware Railroad extends from Wilmington to Delmar, a distance of 97 miles, and is leased to the Philadelphia, Wilmington & Baltimore Railroad Company. There are several smaller lateral lines which serve as feeders to the main line through the Peninsula. These are the Delaware & Chesapeake Railway, the Queen Anne & Kent Railroad, the Delaware, Maryland & Virginia Railroad, and the Cambridge & Seaford Railroad. The New York, Philadelphia & Norfolk Railroad is more the name of a route than of a line of road. The route between New York and Norfolk is made up of several other roads, and the length of the line from Wilmington to Cape Charles, through the Peninsula, is 193 miles; but the New York, Philadelphia & Norfolk Railroad proper terminates at Delmar, 95 miles north of Cape Charles. The connection with Norfolk is made by ferry from Cape Charles, the distance being 36 miles.

The Delaware Railroad and the small branch roads on the Peninsula were mostly constructed by State aid, or by local subscription on the part of the inhabitants. The Delaware Railroad was chartered in 1836, but was not fully in operation until 1853, and by statute was exempt from taxation for fifty years. Under a statute passed by the Legislature of Delaware in 1885, a nominal annual tax of $3,000 was required to be paid by the company.

Statistics put in evidence by the respondents show that the small branch roads that connect with the main line through the Peninsula are operated at an annual loss, considered separately. The Delaware Railroad, according to the evidence, has been operated at a loss in some years and in other years at a profit. In 1887 the net earnings above operating expenses were $131,118, but the interest and dividends paid out of the profits left a small deficiency of about $437. The earnings for the transportation of peaches on this road in 1887 were $109,588, and for the transportation of berries $128,579. A statement put in evidence by the auditor of the freight receipts of the Pennsylvania Railroad Company shows that the total tonnage of peach and berry business shipped from points on the Philadelphia, Wilmington &

Baltimore Railroad to Philadelphia, Jersey City, New York and points on the New York division, was 45,587,744 pounds, or 22,793 tons; that the revenue was $232,702.48; and that the percentage of this tonnage of the whole tonnage of the Philadelphia, Wilmington & Baltimore Railroad and the New York division of the Pennsylvania Railroad for that year was .189 of one per cent. and of the revenue 2.779 per cent.

For the purpose of handling the peach traffic in the Peninsula the respondents annually set apart a number of cars deemed to be adequate for the service. These cars are taken out of the other trade of the respondents about a month before the peach shipments commence. In 1887 there were 713 cars in the peach trade, which carried 1,414 loads, and in 1888, 1,273 cars, which carried 5,296 loads. The cars are overhauled by the respondents for running at a high speed, and are fitted up with shelves, at an expense from $18 to $24 to a car. Some have springs with delicate action, to avoid injuring the fruit. The cars are kept in the service from about July 10 to September 15. In 1888 there were 16 additional locomotives furnished for the service from the Peninsula to Gray's Ferry. An engine on the Delaware Road will haul easily 35 cars, but will not haul more than 25 at the high speed required. Some additional inspectors are also employed for this trade—four or five on the Delaware Road. The evidence does not show that the berry cars require any special fitting up for that trade, except to be supplied with rod doors, which are permanent.

The berry and peach traffic is moved in separate trains from other freight, and at what is said to be a high rate of speed. The freight is moved, according to the evidence, at about 28 to 30 miles an hour, which does not include the time at stations. Fruit is called second-class freight, and takes a preference over third-class freight. Notwithstanding the speed at which the trains are moved, the time required to reach Jersey City from the Peninsula is 12 hours and upwards. Respondents estimate the cost of movement of this traffic at about double that of ordinary freight. Empty cars in this trade are returned at the same rate of speed. They carry no return loads.

Cars used for general freight ordinarily carry return loads and make slow time, and the usual earnings of such a car are five dollars a day.

The rates per hundred pounds on shipments of grain in carloads from points on the Peninsula are 15 cents on the minimum and 16 cents as the maximum to Jersey City; and 7 cents as the minimum and 13 as the maximum to Philadelphia and Baltimore.

The minimum and maximum rates per hundred pounds by market car from points on the Peninsula to Jersey City are as follows: On berries, minimum 60 cents, maximum 67 cents; on all perishable freight except peaches, berries and vegetables in barrels not otherwise specified, minimum 60 cents, maximum 66 cents; on apples, peas and other vegetables in barrels, except potatoes, per barrel, 50 cents; potatoes in barrels, per barrel, minimum 40 cents, and maximum 50 cents. Some of these maximum rates apply to stations on the branch lines only.

For purposes of comparison the rates on some articles of freight from the Peninsula and from Norfolk, respectively, to Jersey City, are given, in tons and carload quantities, with the percentages of difference.

Potatoes: Peninsula, 40 cents per barrel carload (90 barrels), $36. Norfolk, 23 cents per barrel; carload (90 barrels), $20.70. Difference, about 74 per cent.

Kale, spinach, radishes, cabbages and lettuce, in barrels: Peninsula, 50 cents per barrel; carload (90 barrels), $45. Norfolk, 15 cents per barrel; carload (90 barrels), $13.50. Difference, 233 per cent.

Berries: Peninsula, lowest rate per hundred pounds, 63 cents; per ton, $12.60; per carload (7 tons), $113.40. Norfolk, per hundred pounds, 50 cents; per ton $10; per carload (7 tons), $90. Difference, 26 per cent.

Cotton: Norfolk, compressed, 40 cents per bale; per ton, about $2; carload (12 tons), $24. Uncompressed, 50 cents. per bale; per ton, about $2.60; carload (12 tons), $31.20.

Grain: Peninsula, 16 cents per hundred pounds; per ton, $3.20; per carload (12 tons), $38.40.

The average distance from the Peninsula to Jersey City is.

about 190 miles; from Norfolk, 346 miles. The average charge for peaches from the Peninsula to Jersey City is about $90, or about $10 per ton, for a carload of nine tons.

The rate charged from the Peninsula on a carload of peaches to Cincinnati, a distance of about 750 miles, is $196 for a car of 30 feet or under, and $262 for a car over 30 feet; and the rate from the Peninsula to Chicago, a distance of upwards of 900 miles, is $210 for a car of 30 feet or under, and $280 for a car over 30 feet.

As shown by tariffs on file with the Commission, the rates from New York City to Chicago, a distance of upwards of 900 miles by the shortest route, on some of the articles in question, are as follows:

Berries: 65 cents per hundred; 3
crates, and pears: 75 cents p hur ; 1
toes and cabbages: 30 (
Tomatoes: 35 cents per hundr ;

The rates from Florida p to
hearing, the distance varying fro 1,075
as follows:

Potatoes, cabbages and apples: 90 cents to $1.30 per barrel; present rate 77 cents to $1.61. Other vegetables were 95 cents to $1.35 per barrel, present rates being 79 cents to $1.63. Oranges: From Jacksonville were 43 cents per box, 85 cents per barrel; present rate 53 cents per box, $1.06 per barrel; from Tampa were 69 cents per box, $1.37 per barrel; present rate 72 cents per box, $1.44 per barrel.

The rates by the transcontinental lines on fruits from Southern California to certain eastern points, are as follows:

To Omaha and Kansas City, a distance of upwards of 2,000 miles, in carloads, by freight trains, $1.12½ per hundred pounds. To Chicago and St. Louis: $1.25 per hundred pounds. By passenger trains, double these rates.

The through rates from Southern California to New York, a distance of nearly 3,300 miles, by passenger trains, were at time of hearing $3.12½ cents per hundred pounds. Present rate is $2.50.

The New York, Philadelphia & Norfolk Railroad line was opened for business to Norfolk in 1884. The water transportation with which the railroad came in competition, and which is still carried on, is substantially as follows:

The Old Dominion Steamship Company, running to New York, with a regular service of five trips a week, and sometimes an additional ship, the trip being made in from 21 to 26 hours; the Clyde Line, running to Philadelphia, with a service five times a week, and increased at times when the demand of business requires; the Baltimore Steam Packet Company, running from Norfolk to Baltimore, with a double daily service, which is sometimes increased; a daily line to Washington; and the Merchants & Miners Transportation Company, running from Norfolk to Providence and Boston, with a service of three trips a week to Boston and two trips to Providence, and making the same rates to Providence and to Boston—the time to Providence being about 36 hours and to Boston about 41 or 42 hours.

The railroad at the outset reduced the rates in order to get business. This also brought down the rates by the water lines. According to the evidence the railroad reduced rates below the steamship rates, to get business for its line in 1884, 1885 and 1886. At the opening of the season of 1890 the rail rates, according to the evidence, were the same as the water rates. The water carriers have to pay an insurance risk of about 10 per cent. As an example of the reduction of rates by the competition of the rail line the following may be given:

In 1884 the water lines received $1.10 a bale for cotton; the present rate is 40 cents a bale for compressed and 50 cents for uncompressed. In 1884 the rate on peanuts was 20 cents a bag (of 100 pounds) and two cents wharfage; now it is eight cents a bag, carloads, and 13 cents, less than carloads, with the same wharfage. Molasses was 45 cents a barrel; now 25 cents. On perishable goods the reductions have been less.

The proportions of freight carried respectively by the water lines and by the rail line have not been shown, even

approximately, by the testimony. The competing carriers, although interrogated upon the subject, did not furnish the information. It is a fair inference from the testimony, however, that the proportion carried by the rail line has steadily increased up to the present time, and that it probably equals, if it does not exceed, the quantity carried by any one of the competing water lines.

Since the rail line has been in operation and engaged in the systematic transportation of fruit from the Peninsula, many additional markets have been reached, and the points to which shipments are made are now said to be about three hundred. The acreage under cultivation has also considerably increased.

The railroads from Norfolk to Jersey City, passing through the Peninsula and concerning which this controversy exists, are operated either by the Pennsylvania Railroad Company or by companies closely affiliated with it in interest; yet the tariffs in vogue as to the business complained of are not made up on the same basis, or with the same classification in every instance.

For example, the tariffs north of Delmar prescribe the same rate for apples, peas and other vegetables, in barrels, except potatoes, and at the uniform rate of 50 cents per barrel from all stations, both on main line and branches, to Jersey City, while south of Delmar, the articles of kale, spinach, radish, cabbage and lettuce are excluded from this general classification and take a separate lower rate of but 20 cents per barrel; no satisfactory explanation was given on the hearing for this disparity in rates on these last mentioned articles, and the situation shows a charge of 50 cents a barrel for a haul of 122.56 miles, and but 20 cents for a haul of 308.56 miles, over the same line in the same direction and under substantially similar circumstances and conditions.

Another unexplained feature of the tariffs is, that while the rate on berries, peaches, and some other articles is made up on an increasing scale with regard to distance, the rate on other commodities—for example, potatoes—is given the same rate from one end to the other of the lines and including the branch lines.

CONCLUSIONS.

The conclusions in this case will be briefly stated. The rates that are assailed by the complainants are all the rates charged on perishable products from the various points of shipment on the Peninsula, and not a single or particular rate upon some one commodity or from one point. The subject presented to the Commission, therefore, is the system of rates on the class of freight in question, known as perishable freight. These rates are challenged on the general ground of unreasonableness considered in themselves, and also in their relation to the Norfolk rates to the same markets upon corresponding freight. The general claim of the petitioners is that the rates ought to be reduced about one-third. This claim is founded upon the relation that the rates bear to the cost of production of the freight carried, and to the prices it commands in the markets to which it is transported, or the value of the carrier's service to the shipper.

The mandate of the statute is that all rates must be reasonable and just, but how the reasonableness and justice of a rate are to be determined is not prescribed by the statute, nor has any satisfactory test been evolved by transportation experts. Conflicts about rates arise from the conflicting interests of carriers and shippers. As carriers make their own rates, they have primary regard for their own interests, and often give less weight than they ought to the interests of those they serve. This is more frequently the case in the absence of competition. Under the stress of competition, or sometimes for the purpose of developing business, rates that are equitable, or even very low, are likely to be made. But when a controversy arises between the public and a carrier, the question of the reasonable limit of a rate usually involves many considerations and is often difficult to determine. A rate that might be regarded as reasonable and just by a producer and shipper, might, from a carrier's standpoint, be deemed extremely unreasonable and unjust; and so, conversely, a rate that a carrier might claim to be reasonable in itself, and that it might support with strong reasons based upon the cost of the service, the quantity of the busi-

ness and the characteristics of its line of road might exhaust the greater part of the proceeds of the producer's commodity, and be destructive to his interests. It is only stating a truism, therefore, to say there is no recognized test of a rate mutually reasonable for a carrier and for the producer of the traffic.

The reasonableness of a rate must consequently be ascertained in every instance in which the question arises, by its relations both to the carrier and to the shipper, and by comparison with rates normally charged for like or similar service. In the case in hand there was conflict in the testimony upon the part of the producers. Some gave evidence that the rates charged were reasonable and afforded the producer a fair margin of profit, and others claimed with great earnestness, and furnished statistics to show, that the rates absorbed so much of the price of the products that the business of production was carried on at a serious loss. The testimony, however, as a whole, tended to support the claim that the rates are higher than the traffic is able to bear.

The carriers, on the other hand, insist that the rates are only adjusted to the character of the service rendered; that the special nature of the service, requiring the withdrawal of cars for a period of two months or more from other service, the special fitting up of the cars for the carriage of the freight, the high rate of speed at which the trains are run in order to make early delivery at the markets, the greater wear and deterioration to the cars, tracks and bridges by the increased rate of speed and the return of the cars empty, also at high speed, justifies a considerably higher rate than for ordinary freight, and fully warrant the rates charged upon this traffic. The claim of the carrier is that, in view of all the circumstances, the cost of the service for the transportation of this freight is about double the cost of the transportation of ordinary merchandise. The rates charged upon the freight in question are very considerably higher than the rates charged upon other lines of road in other parts of the country upon like traffic for very much longer distances, as is shown in the statement of facts.

The circumstances urged by the respondent carriers in

support of the rates charged are entitled to fair consideration. The service is exceptional, and is more valuable to the producers than ordinary freight service. The carrier is put to additional expense, there is more waste to its property, and an exceptional rate is fairly warranted by the circumstances and conditions of the transportation. But, while an exceptional rate is reasonable, it should not be disproportionate to the increased expense to the carrier, nor to the value of the service to the shipper. If the additional charge is so great as to neutralize the advantages of quick transit the service has no value above the ordinary freight service.

It is quite true that the producers must have quick movement of freight, and must reach markets at the northern cities at seasonable times, or they lose heavily upon the price. Prior to 1888 the chief complaint was that the movement was inadequate, and that the producers failed to receive the benefit in quick transit of the high rates they paid. In 1888 and in 1889 the carriers, it seems, improved the character of the service in this respect, and the markets were in general reached at seasonable hours. For the purposes of this case it is assumed that the movement is as expeditious as the carriers can reasonably make it, and that the freight is delivered at the various markets to which it is sent in season for the best market prices.

This is probably the most material feature of the transportation, and the one which affords best ground for a higher rate than is charged for ordinary freight. It is the ground assigned by the carrier on the tariff schedule. The quick movement is not confined to the loaded cars, but also includes the return of the empty cars, and is, therefore, a service rendered in both directions. The expense of fitting up the cars specially for the service is an item for which the carrier is fairly entitled to remuneration. The fitting up is necessary to no other traffic but is peculiar to this traffic, and is laid aside when the cars are taken out of this business. A very small addition to the rate will, however, compensate for this expense. The withdrawal of the cars from other service, except while lying idle, is perhaps not a feature of controling importance. A car is usually put in service by a carrier

where it will earn most revenue, and can only be in service at one place at the same time, and not in two or more places. But the loss of revenue from cars while being fitted for this service, and again fitted for their usual service, and while reserved for this business, is fairly a part of the carrier's expense, and a legitimate item to enter into the rates. The loss from the return empty of the cars is also a legitimate consideration. It may not be possible to arrive at exact results in respect to any of the features of the service, but the carrier's own estimate, which makes the cost, inclusive of all the circumstances, double that of ordinary freight, is not likely to be understated. But as we have not the cost of transportation of ordinary freight in evidence in this case, this estimate cannot assist us to a conclusion.

Conceding always that a carrier renders its service for hire and is entitled to fair remuneration, which must necessarily include the cost of the service, a contribution to fixed charges and something besides in the form of profit, the question arises, how large a carrier's margin of profit should be to render its charges reasonable to the patrons whom it serves. It is manifestly quite as important on public grounds that the citizens who furnish a carrier with business from the pursuits in which they are engaged should not be oppressed with rates that are disastrous to their pursuits, as that a carrier should not be required to perform its service at a loss. The public good requires that benefits as well as burdens shall be justly distributed, and that one interest shall not profit unduly at the expense and to the serious prejudice of another. This is the spirit of the law. A carrier has the peculiar advantage of being able to apportion its aggregate expenses upon its whole business, but a grower of fruit, or of grain, or a manufacturer cannot do so. The product he markets must alone bear the transportation expense, and if this is excessive and deprives him of any return upon his investment or from his labor or skill, his business is ruined and a public injury is sustained.

The equitable rule doubtless is that rates should bear a fair and reasonable relation to the antecedent average cost of the traffic as delivered to the carrier for transportation, and

the average market price the freight will command, or, as it is termed, the commercial value of the property. Carriers for the most part are believed to recognize this rule. A carrier cannot expect to absorb so much of the market price in its charges that the producer will be obliged to abandon his business. It is not meant by this that a carrier should transport freight at a loss to itself. If a market cannot be reached except at a loss with freight upon which only a just transportation rate is charged, it is no longer a legitimate article of commerce, and a carrier is under no duty to transport it at its own expense. But the principle intended to be expressed is that if a rate is so high as to yield a large profit to a carrier and to deprive its patrons of any profit and make their business ruinous, then the interests of its patrons and the general public interests as well require the carrier to remit a portion of its profits, and accept a rate more equitable both to carrier and patron. This is indispensable to make a rate reasonable and just.

The fact upon which stress is laid by the respondents, that some of the small subsidiary roads, according to the evidence, are operated at a loss, is not overlooked. Like fences, drains and fertilizers upon farms, they involve cost, but have their uses, and are to be considered relatively and not independently. They are feeders to the main lines, and help to swell the revenues of those lines. Their profitableness is not to be measured solely by what they earn themselves, but by the increase of business and revenue they bring to the main lines. For bookkeeping purposes it is proper enough to keep their accounts separately, but for their usefulness to the system of which they form a part these accounts are slight evidence, and these feeders are entitled to a much larger credit. A selected fractional part of any great railroad might be taken and a showing made, by an apportionment of earnings and cost of operation and fixed charges, that it is unprofitable, but this would furnish no indication of its value and profitableness as an important part of the whole property.

For purposes of rates the several auxiliary roads should not be looked upon as wholly independent lines which may

separately establish rates looking only to a satisfactory ledger account of each separate road. These subordinate and branch roads are, for all purposes of control and operation, parts of one great system, as fully as the capes and headlands on the coast of the Peninsula are parts of the mainland, and are all under one strong and efficient management. A rate for continuous transportation over a route consisting of the main line and a branch is one entire charge, and how it may be divided or apportioned among the constituent corporations forming the route is not important to the public. The public is concerned in the reasonableness of the total rate.

The transportation of the perishable products of the Peninsula, while considerable in itself and of the highest importance to the producers, constitutes only an infinitesimal part of the business of the great system to which these roads belong. The peach and berry business alone, in 1887, amounted to upwards of 22,793 tons, and the revenue from it to $232,702, or over $10 a ton, but the evidence furnished by the respondents shows that in 1887 the whole peach and berry business done by the Philadelphia, Wilmington & Baltimore Railroad was only .189 of one per cent. of the entire business of that road and the New York division of the Pennsylvania Railroad, and yet this minute fraction of the business furnished 2.779 per cent. of the revenue. These figures show a very much higher proportion of revenue from this business than from the general business of the respondents. The surprising discrepancy between proportion of tonnage and percentage of revenue may perhaps be explained by some reference to the rates and earnings. Assuming as a basis for comparison an average distance of 190 miles from Peninsula points to Jersey City, and an average charge of $90 per carload of nine tons of peaches, the rate per ton per mile is 5.26 cents; on berries 6.63 cents per ton per mile; on kale, cabbage, etc., north of Delmar, 5.26 cents per ton per mile; and on grain 1.68 cents per ton per mile.

The average earnings of the Pennsylvania Railroad on all freight, as reported for the year ending June 30, 1889, were 0.685 cents per ton per mile, and for the year ending June

30, 1890, 0.661 cents per ton per mile; on the Philadelphia, Wilmington & Baltimore Railroad, including as subsidiary to it the Delaware Railroad, reported together, 1889, 1.517 cents, 1890, 1.356 cents per ton per mile; on the New York, Philadelphia & Norfolk Railroad, 1889, 1.126, 1890, 1.027 cents per ton per mile; and on the Baltimore & Ohio Railroad, 1889, 0.637 cents per ton per mile.

By the Trunk Line tariffs the rate per ton per mile, by the shortest line from New York to Chicago, 915 miles, on peaches is 1.63 cents, and on berries 1.42 cents. By other tariffs the following appears: From Florida to New York, highest rate for assumed average distance of 1,200 miles, on potatoes, cabbages and apples, 1.25 cents per ton per mile; from California to Missouri River, 2,000 miles, for fruit by freight trains, 1.12 cents per ton per mile, and by passenger trains, double that rate; from California to New York, 3,300 miles, by passenger trains, 1.89 cents per ton per mile, and at present rates, 1.51 cents per ton per mile.

The differences in distance account in large measure for the difference in rate per ton per mile between the Peninsula rates and the others to which reference has been made, pursuant to the general transportation rule that the rate per ton per mile diminishes with distance. But the discrepancy shown by the high Peninsula rate can scarcely be wholly accounted for by that rule, and it is plain that another element, the absence of competition among carriers, enters to some extent into the character of the rates. The Peninsula roads are all under one control and management, and there is therefore no competition by railroad to affect rates. There is no choice among agencies of carriage by producers. They must be served by one carrier if served at all. This exclusive control of the lines of carriage may be legitimately used to charge fairly remunerative rates, and to give the carrier reasonable compensation for its service, but it cannot warrant charges wholly in the carrier's discretion and disproportionate to the cost or the value of the service. Exclusive control, or absence of competition, works no exception to the rule that rates must be reasonable and just. When competition in fact exists, the circumstances relied upon in this

case to justify a high rate are given very little, if any, weight by carriers themselves, and this is so generally the case that it is often difficult to understand upon what principle rates are made, or to determine what rate will yield a carrier reasonable compensation for its service. That the rates in question are very much higher than they would be if competition existed on the Peninsula is illustrated by the lower contemporaneous rates from Norfolk.

The conclusions to be drawn from all the evidence, including comparisons with rates on other lines of road upon like freight, and with the general freight rates of the respondents, and after making due and full allowance for the character of the service and the various circumstances that enter into the service, is that the rates are disproportionate to the value of the service and unreasonably high, and that a reasonable reduction should be made. The carrier should not be deprived of fair and just compensation. The service is important and even indispensable to the Peninsula, and the efficiency of the service for the last year or two is not questioned. On the basis furnished by the respondents themselves, that the transportation of the perishable products is twice as expensive as ordinary freight, a material reduction apparently can be made from existing rates and leave a compensatory rate to the carrier, and the Commission finds that a reduction should be made.

The reduction which the Commission have determined ought to be made, growing out of the inherent unreasonableness of the present rate, is as follows:

On peaches and berries, from all stations on the main line, twenty per cent.

On apples, peas, kale, spinach, radishes, cabbages, lettuce and other vegetables, except potatoes, from all stations north of Delmar, and for apples, peas and other vegetables, except kale, spinach, radishes, cabbages and lettuce, from all stations south of Delmar on the main line, twenty-five per cent.

On potatoes, on the main line from all stations, twenty-five per cent.

And the rate not to be more than ten per cent. higher on

the branches than at the junction points with the main line. Even with this reduction the rates on some of these commodities will still be much higher than the Norfolk rates, where low rates exist on account of the water competition at that point.

The evidence indicates quite conclusively that the present difference between the Norfolk and Peninsular rates is operating very injuriously to the Peninsular farmers. Many, if not all, the products above specified from both localities are the same and depend on the same markets. The extremely low rates from Norfolk as compared with the Peninsular rates must materially affect the price in those markets. This Commission is impressed with the magnitude and importance of the interests involved in this proceeding. They cover a large territory and a great population. But the evidence, while it has demonstrated this fact and further that the Peninsular rates are excessive, independent of their relation to the Norfolk rate, has failed to show the circumstances attending the traffic from the respective localities sufficiently to enable the Commission to determine with satisfaction to itself what the the relative rates ought to be. The case has been heard quite informally, and, perhaps, by inadvertence, the evidence bearing on the question of what the relative rates should be is very meagre, and we are clear that this branch of the case should be supplemented by further evidence before it is finally determined. But as the season of transportation of these perishable articles is at hand it is deemed right and best to issue an order pending the cause respecting the rates on those commodities in regard to which the testimony is sufficient and plain and which are held to be unreasonable in themselves, and this order will be permanent unless modified under the additional investigation of the less rates from Norfolk, for which purpose the case will be retained.

JOHN P. SQUIRE AND COMPANY *v.* THE MICHIGAN CENTRAL RAILROAD COMPANY, THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, THE BOSTON & ALBANY RAILROAD COMPANY.

Complaint filed January 19, 1889.—Order entered granting other carriers leave to intervene as parties, January 19, 1889.—Joint answer filed March 1, 1889.—Hearing had at Chicago, May 27, 1889.—Depositions on behalf of complainants filed November 1, 1889.—Depositions on behalf of defendants filed November 20, 1889.—Final hearing had at Washington, June 3, 4, 1890.—Decided April 21, 1891.

1. The provision of the third section of the Act to regulate commerce prohibiting carriers from making or giving any undue or unreasonable preference or advantage to any particular person, firm, company, corporation or locality, or any particular description of traffic, in any respect whatsoever, not only applies to relative rates on one description of traffic shipped to or from competing localities, but also to relative rates on differently described articles which are competitive in the same markets: and when carriers have established rates on articles of competitive traffic which are relatively reasonable and fair, they cannot arbitrarily select particular articles of such traffic and materially raise or lower rates so established thereon without violating that provision of the statute.

2. The relation of rates ought to rest upon fixed and stable conditions. The fluctuations of markets are so frequent, especially as to competive articles, and oftentimes unexpected, that commercial considerations alone would not furnish a sufficiently stable and fixed rule for guidance in making a rate that should remain substantially permanent through all fluctuations. The Commission does not, by a fixing of rates, attempt to overcome advantages which one producer or dealer may have in his geographical location, and to produce equality between competitors in all markets. It would be a useless task, even if it had the power, to attempt to accomplish such a result. The proper relation of rates for transportation of strictly competitive articles over the same line should be determined by reference to respective costs of service ascertained with reasonable accuracy.

3. The application of the series of principles laid down in this case as governing relative rates of competitive articles does not justify similar violations of the requirements

4. The rates involved in this case are those on live hogs, live cattle, and the dressed products of each. These are found to be competitive commodities, and therefore entitled to relatively reasonable rates for transportation proportioned to each other according to the respective costs of service.

Shellabarger & Wilson for John P. Squire & Company.
Ashley Pond for Michigan Central Railroad Company.
Frank Loomis for New York Central & Hudson River Railroad Company.
Samuel Hoar for Boston & Albany Railroad Company.

REPORT AND OPINION OF THE COMMISSION.

VEAZEY, *Commissioner:*

The complainants, John P. Squire & Company, are engaged in the business of slaughtering hogs in the vicinity of Boston, Massachusetts, and curing and selling the meats thereof, their trade lying in New England, Middle and Southern States, as well as in England and other foreign countries.

The questions presented grew out of the rivalry between the complainants and those persons engaged in the same business in the Western States. The complainants are large shippers of hogs from western points, their main supply being drawn from there, but are not shippers of hog products from the west to the east, but claim they are interested in such shipments indirectly for the reason that their business cannot be carried on at a profit unless the carriers maintain a proportionately higher freight rate for the products than for the live animals, because, as it is said, the profit of the seaboard slaughterers depends to a very large extent upon their ability to sell what are denominated the "precious parts" of the animal as fresh meat in the markets in the vicinity of the abattoirs, without curing such parts; and they also claimed to be indirectly, although more remotely, interested in the freight rate on dressed beef, because, as it is said, if the price of dressed beef goes below that of the dressed hog, the cheapness of the former drives out the sale of the latter.

The complainants, feeling aggrieved at the action of the

railroad companies, who had for some time maintained a freight rate of thirty cents on live hogs and sixty-five cents per hundred pounds on the dressed hog and beef product, in reducing the freight charge on the product between the east and the west, without a corresponding reduction of the freight charge on the live animals, instituted this proceeding, which has for its object the fixing of such a relation of freight charge on these different kinds of shipments as will enable the complainants, and others engaged in the same kind of business in their vicinity, to carry on their business upon equal terms with the western slaughterer.

The defendants in the case, as it was originally presented, were the Michigan Central Railroad Company, the New York Central & Hudson River Railroad Company, and the Boston and Albany Railroad Company. But it appearing that the questions raised were such that other carriers not named as defendants were interested therein, to wit:

The Central Vermont Railroad Company,
The New York, Ontario & Western Railroad Company,
The Pennsylvania Railroad Company,
The New York, Lake Erie & Western Railroad Company,
The Delaware, Lackawanna & Western Railroad Company,
The Baltimore & Ohio Railroad Company,
The Grand Trunk Railway Company;

—it was on the 19th day of January, 1889, ordered that each of said carriers be furnished with a copy of the petition and of the order, "and that they have leave to intervene as parties, by filing notice of desire to do so within twenty days from this date, in which case they will receive notice of hearing, and may appear and be heard therein if they so desire."

None of the last-named carriers availed themselves of the privilege accorded them, and only the original-named defendants appeared to contest the demand of the complainants.

These defendants filed their answers on the 31st day of March, 1889.

The complaint states substantially that the complainants are copartners, engaged in business, and carry it on as above set forth, employing a thousand persons, and their business amounts to from thirteen to fifteen millions of dollars annually, and they pay for freight charges over seven hundred thousand dollars annually; that their chief sources of supply for the live animal are the western markets, which are indispensable to the business, and that they there come in competition with the western slaughterers and also compete with them in the markets where the hog products and dressed beef are sold; that the item of freight is one of great magnitude and controlling of the business; that the hog product, cured or uncured, is in competition in the markets with dressed beef; that large quantities of dressed beef are being constantly shipped from Chicago to the eastern markets; that the railroads which operate the lines between those sections are engaged in this traffic; that the relative rate between said points upon live hogs and slaughtered beef, and the product of slaughtered hogs, ought to be such that when the freight charge upon live hogs is 30 cents per hundred pounds, the rate on slaughtered beef or slaughtered hogs should not be less than 65 cents per hundred pounds, and the rate on live cattle 35 cents; that from June 20, 1887, to December 17, 1888, the carriers, after having established that relation of freight charge, did not maintain such relation of rates, as appears from the following table:

Rates of Freight on Live Stock and Dressed Meats from Chicago to Boston, taking effect on the dates following, being the rates in cents per one hundred pounds.

Date.—1887.	Cattle.	Hogs.	Dressed Beef and Dressed Hogs with Dressed Beef.	Dressed Hogs in Common Cars.	Dressed Hogs in Refrigerator Cars.
June 20	35	30	65	60	65
Nov. 21	31½	30	58½	54	58½
Nov. 21	28½	30	52½	48½	52½
Nov. 23	25½	30	47½	43½	47½
Nov. 25	23	30	42½	39	42½
Nov. 26	20½	30	38½	35	38½
Nov. 28	18½	30	34½	31½	34½
Nov. 29	16½	30	31	28½	31
Dec. 26	35	30	65	60	65

1888.					
Jan. 23.....	35	30	67	60	65
Jan. 23.....	35	30	70	60	70
April 26.....	35	30	65	60	65
May 14.....	25	30	65	60	65
June 25.....	21½	25	40	40	40
June 29.....	21½	25	35	35	35
June 29.....	16½	25	30½	30½	30½
July 2.....	14½	25	26½	26½	26½
July 3.....	14½	25	26½	26½	26½
July 5.....	14½	25	26½	26½	26½
July 6.....	14½	25	26½	26½	26½
July 7.....	13½	25	25½	25½	25½
July 9.....	12½	25	23½	23½	23½
July 10.....	11½	25	22	22	22
July 11.....	10½	25	20½	20½	20½
July 12.....	10½	25	19	19	19
July 13.....	10½	25	18	18	18
July 14.....	10½	23	17	17	17
July 30.....	10½	23	17	17	17
Aug. 3.....	10½	23	17	17	17
Aug. 20.....	16	23	30	30	30
Oct. 22.....	17½	30	35	35	35
Dec. 17.....	22½	30	50	45	50

That the deviation shown in the foregoing table, from the relative rates above said to be reasonable, operates an undue and unreasonable prejudice and disadvantage to the complainants; that live cattle, live hogs and the dressed products of each should be placed in one classification so far as rates and charges for transportation are concerned; and that when reasonable relative rates have been established and published any change in the rate for any one or more of said articles should be followed by a corresponding change for all; that the action of the carriers in deviating from the relative rates which had been established at the points first set forth, has damaged complainants more than $75,000 since November 21, 1887, and jeopardizes the continuance of their business.

The joint answer of the original defendants (the other defendants not appearing) admits the principal facts as set for thin the complaint as to the business of complainants, their method of transacting the same, and the participation of the defendants in all the traffic, but denies that complainants' business was dependent upon the relation of rates as claimed,

and denies the allegation of competition between slaughtered beeves and hogs, except to a limited extent; they admit that the table of rates mentioned in the complaint is correct; they deny that the deviation from the relative rates which had been established and in operation theretofore affected the complainants injuriously or was in any respect unlawful; they also deny that the just relative rate on the different articles is as stated in the complaint, or that the subject is one to which the doctrine of relative rates applies; they assert that they were compelled to make the reduction on slaughtered beeves and hogs below a reasonable amount therefor because of controlling competition by other lines, or abandon the transportation; they aver that the variation in freight rates has not affected the price of the commodities in the market.

The facts material to the controversy are as follows:

I. The business of the complainants and their method of carrying it on, the source of supply and the markets are as stated in the complaint. That is to say, that they are engaged in the business of slaughtering hogs and curing and selling the meats thereof, and that their trade lies in the New England, Middle and Southern States of this country and also in England and in other foreign countries. They buy large numbers of hogs in the Western States and procure them to be transported over divers lines of railroad from the markets where purchased to the cities of Cambridge and Somerville, Massachusetts. In the prosecution of their business they purchase large numbers of live hogs in the western markets, principally in Chicago, but some in Kansas City, Omaha, St. Joseph and St. Louis, the hogs purchased at said points west of Chicago being concentrated at Joliet, Illinois, and transported by rail to the complainants' place of business, the shipments from all points aggregating on an average one hundred and seventy-five carloads per week. The business of the complainants from the 1st of June, 1887, to and including the 31st of December, 1888, as to the points from which the live hogs were procured, the number of double-deck cars, the number of animals, the gross weight,

the purchase cost and the freight is as shown in the following memorandum:

MEMORANDUM STATEMENT.

Showing the number of cars, number of live hogs, purchase weights and cost; also freight charges paid on shipments made from points as given below, to East Combridge, Mass., by John P. Squire & Co., from June 1, 1887, *to December* 31, 1888, *inclusive.*

Date.—1887. June 1 to Dec. 31.	From	No. D. D. Cars.	Number of Hogs.	Gross Weight.	Purchase Cost.	Freight.
Inc.	..Chicago, Ill. ...	2,938	263,527	73,707,100	$3,667,655.14	$229,588.82
"	..St. Joseph, Mo..	609	58,954	14,938,770	722,463.74	79,270.90
"	..Sioux Cy., Ia...	43	3,539	1,163,070	50,703.90	9,211.63
"	..So.Omaha,Neb.	898	81,628	22,197,030	1,099,468.00	136,551.56
"	..Kansas Cy.,Mo.	300	28,056	7,351,610	381,557.46	29,131.96
Jan. 1 to Dec. 31, 1888.						
Inc.	..Chicago, Ill....	4,624	416,843	112,954,730	5,373,372.64	309,840.78
"	..St. Joseph, Mo..	1,194	122,529	30,671,550	1,660,880.71	137,480.65
"	..So.Omaha,Neb.	1,428	136,595	36,125,650	2,049,121.48	167,898.06
"	..Sioux Cy., Ia...	20	1,853	493,120	26,904.44	2,495.21
"	..Kansas Cy., Mo.	741	73,745	19,009,270	1,051,875.23	82,506.49
"	..E. St. Louis, Mo.	19	1,950	463,050	24,445.63	1,583.02
"	..Peoria, Ill.....	3	244	78,790	3,981.31	256.73
		12,817	1,189,463	319,153,760	$17,117,229.68	$1,182,815.81

Average weight of animals transported per car...24,900 pounds
Average weight of live hogs..... 268+ "
Average purchase cost per hundred weight....$5.36⅛
Average freight cost per hundred weight..... 36½ cents.

II. The chief source of supply for the business in which the complainants are engaged is the said western markets, and said markets are indispensable to said business. The complainants are compelled to compete in various markets where their hog products are sold with various firms or corporations which have slaughter-houses in the Western States where the live hogs are purchased, and also with the sellers of dressed beef who have slaughter-houses in the Western States. Large quantities of beef in the slaughtered state are constantly being shipped from Chicago to Boston and other points on the seaboard for market, and this supply is sold in competition with the hog products produced by the complainants and others similarly engaged.

Live hogs and the dressed product are competitive in the markets, as was conceded by counsel for the defendants on

the hearing, and was found in the case of The Chicago Board of Trade *v.* The Chicago & Alton Railroad Company and others, 4 I. C. C. Rep. 158; 3 Inters. Com. Rep. 233, recently decided.

It has been a common practice on the part of the western slaughterers to ship the precious parts, so-called, of the dressed hog in cars with the dressed beef, and these parts are sold in a fresh state in competition with the similar product of complainants and other eastern slaughterers.

The defendants are common carriers of passengers and property, partly by rail and partly by water, under a common arrangement for a continuous carriage or shipment, and are engaged in transporting freights over their lines of railroad as one continuous line, between Joliet and Chicago and the places where the complainants carry on their business; and for more than a year preceding the institution of this proceeding the companies have been receiving from the complainants for transportation the carloads of live hogs specified in the foregoing schedule, and during the same period the said railroad companies have been engaged in transporting slaughtered beeves and live cattle as well as the products of slaughtered hogs from Chicago to said points for the eastern markets.

The rates for the transportation of these different commodities are correctly set forth as of the dates mentioned in Exhibit "A" attached to the complaint and above set forth in full.

III. The complainants and their predecessors in the same business have been in business since 1847, and have always claimed of the railroad companies that the freight rate upon live hogs and live cattle should be proportionately less than the freight rate upon slaughtered beeves and slaughtered hogs. These appeals were not always entertained by the railroad companies, and there does not appear to have been any fixed proportionate rate between these different kinds of shipments until 1885, when an appeal was made to the commissioners of the Trunk Line Association to fix such a rate, and an exhaustive hearing was had before these commission-

ers, the representatives of the railroads and the western slaughterers, as well as the complainants and others interested appearing, and in March, 1886, it was decided that the rate on live hogs should be thirty cents, and the rate on live cattle thirty-five cents, and the rate on dressed beef in refrigerator cars, which should cover the fresh-hog products carried in those cars, should be sixty-five cents per hundred pounds. This traffic established by the Trunk Lines prevailed for several months after being fixed by the commissioners of the Trunk Lines.

IV. Eliminating the cost of transportation, the product can be produced, so far as shown in this case, as cheaply by the eastern as the western slaughterers.

V. Upon the average a 280-pound hog dresses about 210 pounds. There was some difference in opinion on the part of the witnesses, as to the percentage of dressed meat obtainable, some placing it as low as 69 per cent., and one as high as 80. The preponderance of testimony, however, was that it was about 75 per cent., and the fact is so found. Out of the dressed meat the portions which are sold in the eastern markets in the fresh state in loins, sausages, etc.—the "precious parts" as they are called—are about 25 per cent. The live hog shrinks in transportation from Chicago to Boston about three per cent. in weight. The live hogs are carried in double-decked cars, averaging about 24,000 pounds to a car. The business of complainants for a year and a half, as appears above, shows that their cars averaged 24,900 pounds of load. In these cars the dead weight is about 22,000. The product is carried in refrigerator cars, which, in the summer, are required to be iced, no charge being made for weight of the ice carried or for the furnishing of the ice. The average weight of a load of dressed beef in refrigerator cars is 24,000 pounds, with a dead weight of car of about 40,000 pounds, making the whole weight of a loaded refrigerator car 64,000 pounds, as against 46,000 pounds for the whole weight of a car loaded with live animals. The refrigerator process requires about five tons of salt and ice to a car. The live animals are quickly loaded and unloaded, only fifteen minutes

being taken in the operation. This is done by the shipper. The product is loaded and unloaded much more slowly; this service being performed by the carrier. As a consequence the cars used for the shipment of live animals suffer but little detention at the initial station or at the delivering station, while those with the product are apt to be detained at both ends of the line. The risk of transportation is so small, both as to the live animals and the product, as not to be an important factor in the adjustment of rates.

VI. The Trunk Line arrangement, charging 30 cents on live hogs, 35 cents on live cattle and 65 cents on the product, remained in effect until November 21, 1887. About the 1st of November, 1888, the Baltimore & Ohio Railroad Company made a contract with Armour & Co. and others of Chicago, with reference to rates for the product of their slaughter-houses at Chicago. That contract provided that the rates should never be less than 30 cents a hundred pounds from Chicago to New York, with the usual difference to other points, and should never be higher than 45 cents a hundred pounds between those cities. The business of Armour & Co. is very large. They slaughter on an average yearly four or five thousand hogs a day. They ship largely in their own cars, for which they receive not less than three-fourths of a cent per mile, and under certain contingencies one cent. The complainants and other eastern slaughterers are competitors with Armour & Co. and other western slaughterers in the southern markets. The dressed product is shipped in packages, for which the same freight rate is charged as upon the contents. Armour & Co. ship about twenty-five cars a week to Boston and about ten cars a week to Boston points.

VII. In the latter part of 1887 and during most of 1888 there was a great strife between railroad companies, the different competing lines, in regard to the transportation of dressed beef. The result was that the freight rates were very much reduced, and about April, 1888, an agreement was made between the Chicago & Grand Trunk, which has a line from Chicago to the eastern seaboard by way of the Grand Trunk

Line in Canada, and certain shippers of dressed beef with reference to rates which should be charged for transportation of that class of property. The agreement was in substance that the rate on dressed beef should not exceed 45 cents and continued for over a year. Since that time the rate of that line has not at any time gone above 45 cents per hundred pounds by its main line, but by what is called its Niagara Frontier line the rate has been 48 cents. The Grand Trunk gave notice of an open rate to all shippers that they would carry dressed beef at the prices stated. As a consequence, all the cattle-carrying roads reduced their freight rates to meet the cut of the Grand Trunk and Baltimore & Ohio.

The complainants do not claim that the rate charged for the transportation of live animals is in itself unreasonable; they only claim that the freight rate on slaughtered beeves and hogs should not be reduced without a corresponding reduction in the freight rate on live animals.

Looked at from the standpoint of the carrier, the carriage of products is attended with more expense than the carriage of live animals, and if a given rate for the transportation of the former is a just and reasonable one, that for the latter should be less. The differences above alluded to may be recapitulated as follows:

1. The product is carried in more expensive cars, and although the increased cost when distributed over all the shipments during the life of the car would amount to so little on each trip as to be merely nominal, yet the interest on the increased original cost and the greater outlay for repairs are constant expenses.

2. The weight of the refrigerator car, when loaded with the product, including the ice for refrigeration, is about 64,000 pounds, and that of the live-stock car when loaded is 46,000 pounds. If the tariff was based solely upon tonnage—that is, upon the weight of the car and its load—when the carrier charges 30 cents per hundred for carrying the live hogs, the charge for carrying the product should be about 42 cents per hundred.

3. The loading and unloading of the animals by the shipper instead of by the carrier is a continuing advantage.

4. The rapidity with which the cars used in the live-hog traffic are loaded and unloaded render them less liable to detention, and they are returned to the traffic sooner than when loaded with the product.

5. The refrigerator cars have to be iced. Five tons of ice and salt per car are furnished in the Chicago-Boston business. This is a constant expense in summer months.

6. The product is more valuable than the live animals.

The foregoing considerations would certainly apply if this were a proceeding in which the carrier was attempting to justify a higher charge on the product than upon the live animals.

Upon the facts it is contended on the part of the complainants that relative rates should be fixed on live hogs, live cattle, dressed beef and dressed pork, and that they should be so prescribed as to prevent any undue or unreasonable preference or advantage to one over another.

The provisions of the third section of the law are invoked as giving authority for making proper relative rates. That section provides "that it shall be unlawful for any common carrier to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation or *locality*, or *any particular description of traffic*, in any respect whatsoever."

We think this section applies not only to rates on the same article as between different persons competing therein in the same locality, but also authorizes and requires the fixing of just relative rates as to different articles which are competitive in the same markets.

The design of the section was not only to protect the business of localities from unjust discrimination, but to protect the business interest of the individual, and to prevent such discriminations as would operate to the injury of one of a class of persons engaged in the same business with others in whose favor such discriminating rates would operate. The live animal and the product being competitive, the business

of the eastern slaughterer who transports the live animal from the west and manufactures the product in the east is competitive with that of the western slaughterer who slaughters the animal in the west and ships the product to the east. The competitive business of buying live hogs and the manufacture and sale of the product as shown in this case is so interwoven that the rates for their transportation should not be made upon independent considerations; therefore, this case presents a situation where the doctrine of relative rates should apply, for in the contemplation of the Act the business in both of its aspects is really one and the same thing.

The fixing of relative rates is a matter of extreme difficulty. The relation of rates ought to rest upon fixed and stable conditions. The complainants insist that the proper relation of rates, when the live hogs are transported at 30 cents per hundred from Chicago to Boston, is 35 cents on live cattle and 65 cents on the fresh dressed product. Thirty cents per hundred between Chicago and Boston, a distance of 1,048 miles, is but a trifle over 5.72 mills per ton per mile, a rate which in itself is not claimed to be unreasonable.

Assuming, then, the charge upon live animals of 30 cents per hundred to be a just and reasonable rate, the question recurs, What rate should be charged upon the product in order that the due relation should be maintained? It is said by the complainants that in arriving at this proper relative rate, considerations growing out of the relations of these two articles in the market should be taken into account. The only difference in the method of business between the eastern and western slaughterers is, so far as shown by the evidence, that the slaughterer in the west manufactures the product there which is transported to the east, while the other transports the live animals from the west to the east and slaughters in the east. They are both producers of dressed product for the same market. This being so, complainants' counsel argued that if the carrier may make rates on the live animal and the dressed product without reference to each other, then it may put an end to the traffic of either the eastern or western slaughterer at its will; that the carrier cannot be

permitted to annihilate the one or the other at its pleasure; that it would seem to follow irresistibly that relative rates should be fixed as to the live animal and its products in the fresh state; that rates relative to each other should be such as would bring these competitors on an equality. This seems to be a sound proposition within proper limits. If the carriers have a fair rate for themselves on each of these commodities they should not deviate therefrom arbitrarily to the injury of one class of the competitive dealers.

To illustrate: If a fair price to the carrier for transporting one hundred pounds of live hog is 30 cents between two points, and a fair price for transporting one hundred pounds of dressed, fresh hog or beef product, between the same points, is 65 cents, it would be an unjust discrimination for the carrier to deviate from either of these rates arbitrarily, if such deviation operated to the injury of an individual competitor in the business. Therefore, it would be the duty of the carrier, if it should make a change in any rate on either the live animal or the dressed product, to make a corresponding change in the other; that is, such would be his duty as between competitors in the business; otherwise one class of persons would become the sufferers by a change of rates that the interests of the carriers did not call for; and as above stated, the third section of the Act to regulate commerce seems to have been expressly designed to prevent such preferential discriminations.

The complainants have advanced the theory that the Commission in fixing these relative rates should be governed by commercial considerations wholly, independent of the cost of carriage. It was said by Mr. Squire, one of the complainants, in his testimony, that railroads should make just relative rates so that both parties could live, and that "the product rate should be higher than the live-hog rate, even if the cost of transporting the two articles be the same, which is not the case." It is to this theory that the complainants have very largely directed the attention of the Commission.

A rate which is based upon this theory would have to vary in the case of the live hogs with every change in the market price of the animals in the western markets.

Rates for the transportation of property should be arrived at and based so far as practicable upon permanently continuing, fixed facts and conditions. The fluctuations of the markets of the country are so frequent, especially as to competitive articles, and oftentimes unexpected, that commercial considerations alone would not furnish a sufficiently stable and fixed rule for guidance in making a rate which ought to remain substantially permanent through all fluctuations.

Upon this point so strenuously urged by the complainants that carriers should adjust their rates in a way to produce equality between the competitors in all the markets, it must be apparent that it would be a useless task for the Commission, even if it had the power, to attempt to accomplish such a result. It would involve a careful research into all the circumstances surrounding the business of each locality, as questions of rent, rates of taxation, cost of labor and many other things which suggest themselves. The evident result would be that there would have to be as many differently constructed rates as there were different localities.

Another consideration urged as proper in respect to relative rates is the fact of shrinkage of from two to three per cent. in the transportation of live animals from the west to the east, making the cost of the live animal more to the eastern slaughterer than to the western. But that is an advantage to the western slaughterer and a disadvantage to the eastern slaughterer resulting from the location of the slaughter-house. It is similar to the question of rent, which might, and probably would, be more in one city than in another. The individual in locating his business must take the risk in the balancing up of advantages and disadvantages arising out of one location as compared with another, and can not justly ask the carrier to indulge in the perplexing problem as to which way the balance rests, and then to make his rates so as to make a man in Chicago stand on an exact equality in the markets, so far as pertains to local advantages, with his competitor in Boston.

Another consideration which was urged was that there are commercial, or rather public, considerations, outside of those facts which go to determine a fair rate in itself for the carrier,

which should control in making the relative rates, namely, that there is a large amount of capital invested by the complainants and other eastern slaughterers which does now and has for many years given employment to a vast number of men in what has been regarded as a stable business, and in it they are practically fixtures in a business point of view. That those men should be disturbed in their calling by changed conditions in the business in which they are engaged, or arising out of the growth and development of the country, is a misfortune and very likely may result in hardship. But in one of the first cases brought before the Commission for adjudication (*In re* Iowa Barb-Steel Wire Company, 1 I. C. C. Rep. 17; 1 Inters. Com. Rep. 605) the same question was raised, and it was there held that the Commission had not been given a general dispensing power to relieve hardships of this sort. It has also been repeatedly stated that it is not the province of the Commission, by a fixing of rates, to overcome the advantages which one producer or dealer may derive from his geographical location.

It is evident, therefore, that relative rates can not be adjusted from a purely commercial standpoint. In saying this it is not to be understood that the increased value of the product is not legitimately to be taken into account in the fixing of the rate, which is altogether a different proposition from that advanced by the complainants that the rate should be such as to equalize the standing of different producers in the business in the respective markets of the country.

We are of opinion that in the fixing of relative rates upon articles strictly competitive, as these are, the proper relation should be determined from the cost of the service, and if the difference in this respect between two competitive articles can be ascertained, such rate should be fixed for each as corresponds to the cost of service. This is fair to the carrier, and we believe the manufacturer has a right to demand of the companies that such a relation of rates as to these articles should be maintained.

Applying that doctrine to this case the only definite figures which have been given are those showing the total tonnage of the loaded cars in the case of live animals and the dressed

fresh product. As appears above, the total weight of a carload of live animals, including the dead weight of the car, is 46,000 pounds, while the total weight of a car loaded with the product in the fresh state is 64,000 pounds, and when the rate on live hogs is 30 cents, the railroad companies should receive 42 cents on the product, in order that they might receive exactly the same sum in each case for each hundred pounds of tonnage carried. A rate based on the tonnage, therefore, should not be less than 42 cents on the product when it is 30 cents upon the live animal. The other enumerated differences which make the cost of carriage of the product greater than that of the live animals are not so definitely stated, and can not be arrived at with the same arithmetical exactness, namely, increased cost of cars, the loading and unloading of the product by the carrier, as distinguished from the loading and unloading of the live animals by the shipper, the liability to detention of the cars engaged in the product traffic, and the refrigeration of the cars and so forth. If three cents per hundred were added on account of these latter considerations, that sum would produce $7.20 per car for each trip, and assuming the correctness of the figures above given in the computation in regard to the total tonnage of the loaded car, including the dead weight, this would make the rate on the product 45 cents per hundred when the rate on live animals was 30 cents, in other words, 50 per cent. greater. At the time of hearing and filing of brief on the part of the defendants, this relation of rates was in existence.

We do not now decide that the above amounts are to be taken as the proper relation of rates. A careful examination of the testimony fails to disclose satisfactorily what the difference in cost of service in the transportation of these competitive articles is. The indication therefrom is that with live hogs at 30 cents the dressed product should be at least 50 per cent. more. But as the complainants depended on the claim that commercial and public considerations should control in the making of relative rates between the commodities in question, the branch of the case relating to cost of transportation seems to have been lost sight of in large measure, and the testimony bearing thereon is meagre, and

but little attention was given to it in the arguments. But the defendants have means at hand of determining with sufficient accuracy for practical purposes what the relation should be, and the case must be left for them to establish that relation in the first instance, which should accord with the principles above laid down. This disposition is likely to be safe for the complainants, as it would seem that the interest of the carriers would be in the direction of widening the difference in the rates rather than to narrow it.

The defendants claimed that the reduction which they made in the freight charges upon the products was brought about by the action of the Grand Trunk Railroad Company, which sought the business from Chicago to Boston and offered an open rate to all shippers at 45 cents per hundred pounds, and also by reason of the action of the Baltimore & Ohio Railroad Company, which made contracts at a reduced rate between Chicago and New York. The defendants say that they were obliged to meet the cut of the other roads. However that may be, it has but little, if any, bearing on the proper solution of the present question, which is one of relative rates merely.

If any articles are competitive in the markets, the clause of the law which makes it unlawful for a common carrier to give any undue or unreasonable advantage to one over another, or to subject one to an unreasonable prejudice or disadvantage, applies. In contemplation of the Act, as we interpret it, these competitive articles are to be treated as one subject by the carriers in providing for their transportation.

This situation demands for such articles relative rates of freight, and when the carriers establish a rate upon one of them they should make a rate on the other, relatively smaller or greater, basing the relation in rates upon the differing cost of the service as to each. Our present decision is that this relation of rates, secured to the business community by the express provisions of the Act to regulate commerce, shall be determined by reference to the relative cost of service, eliminating, in the process of ascertaining what may be a proper relative rate, the many considerations other than the cost of

service which enter into the establishing of a rate for independent, isolated articles.

In this view of the case, it is not easy to see how the cutting of the rates by the Grand Trunk and Baltimore & Ohio Railroad Companies affects the question. The rate on live hogs should be a certain proportion of the rate on the product, and the persons engaged in the business, such as the eastern and western slaughterers are, have the right to demand a proper relative rate between the live animal and the product, and this because the case shows, and the fact is conceded by the counsel for the defendants, that the live animals and the product are competitive with each other in the markets of the country.

JACOB SHAMBERG *v.* THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY AND THE NEW YORK, CHICAGO & ST. LOUIS RAILROAD COMPANY.

Complaint filed July 7, 1890.—Answers filed July 26 and August 1, 1890.—Hearings had at Washington October 17, and at New York November 12, 1890.—Final hearing had at Washington January 8, 1891.—Briefs filed January 5-9, 1891.—Decided April 25, 1891.

A firm of cattle dealers in the city of New York, who procured their cattle on a large scale from Chicago and other western points for domestic consumption as well as for export, make an arrangement with two interstate rail carriers constituting a through line from Chicago to New York that the said firm will, under the name of an express company of their own creation, furnish not less than 200 or more than 400 improved live-stock cars for the transportation of these cattle. For the rental of these improved stock cars the carriers pay this express company ¾ of a cent per mile, whether loaded or empty. Extraordinary facilities and rights of way are given these cars to enable them to make a large mileage, and they make more than twice the mileage of ordinary stock cars. Besides this, the carriers pay 50 cents for the loading of each of said cars with cattle at the Union Stock Yards in Chicago, for which no charge is made against the express company or the firm represented by it. In addition to this, the carriers pay this firm yardage at the rate of 3½ cents per hundred pounds on all their cattle, and upon all other cattle hauled for other firms in the care of this firm, owning the express company, to its yards at pier 45, East River. This yardage charge is thus paid to the said firm by the said carriers for keeping their cattle in the firm's own yards after delivery of them to the firm, and then this yardage charge is deducted from the tariff rate charged by the carrier. The amount of these rebates to this firm in rates on these cattle by these carriers more than pays the entire cost of the improved stock cars within two years after operations are commenced with them, including the expenses of operation, leaving said firm owning the cars and still operating them with all these advantages and rates and facilities. *Held*—

1. This is an unlawful preference to the firm owning these improved stock cars and a violation of the Act to regulate commerce.

2. It is an unlawful and unjust prejudice to other cattle firms and dealers in New York who are competitors in the business of said firm owning said improved stock cars.

John D. Kernan, for complainant.
Wheeler H. Peckham and *J. D. Bedle*, for D., L. & W. R. R. Co.
S. E. Williamson, for N. Y., C. & St. L. R. R. Co.
Daniel P. Hays, for Lackawanna Live Stock Express Co.

REPORT AND OPINION OF THE COMMISSION.

BRAGG, *Commissioner:*

The complaint of Jacob Shamberg sets forth in substance, that he "for some time has been and is actively engaged in the city of New York in the business of transporting from the west live stock and supplying both foreign and domestic demand for the same or the products thereof," and that this business requires large capital and experience, and is conducted by him in said city in competition with many persons and corporations; and that the defendant railroads are common carriers engaged in the transportation of live stock between Chicago and other western points and New York "under some common control or management for continuous carriage between said points," as part of a through line and under a joint tariff of rates for such transportation.

It is then charged in the complaint on information and belief,

1. That since about December 1, 1889, the defendants, in violation of the Act to regulate commerce, have been and are guilty of unjust discrimination in that, while charging complainant and many others their regular tariff rates for the transportation of live stock from Chicago to New York, they charge others who are competitors of complainant in said business lower rates "for like and contemporaneous service under substantially similar circumstances and conditions."

2. That the Lackawanna Live Stock Express Company, of which B. A. Hegeman, Jr., of Newark, N. J., is general manager, is a bureau or agency organized and controlled by defendants for the transaction of the live-stock transportation business over their lines from Chicago to New York and

whose cars are only used on said lines between said points, and it is compulsory on live-stock shippers to use the cars of said Lackawanna Live Stock Express Company; that said live-stock transportation business is so managed by the defendants and said Lackawanna Live Stock Express Company under an arrangement with each other that certain firms and persons in New York have the use of the cars of said Lackawanna Live Stock Express Company in preference to complainant and others, their competitors; that defendants allow to said Lackawanna Live Stock Express Company, for the use of its cars, a mileage of three-quarters of a cent per mile, and said cars "are expedited and afforded discriminating and preferential facilities so as to insure very large mileage earnings." And it is so arranged by said defendants and said Lackawanna Live Stock Express Company that about one-half or some portion of said mileage is paid to said competitor of complainant and of others "as a rebate or allowance or deduction from the regular tariff rates charged by defendants to complainant and others," so as in effect to afford such competitors lower rates than are given to those who ship over said roads at the regular tariff rates.

3. That defendants by reason of the above facts have made and given and do make and give an undue and unreasonable preference and advantage to said competitors of complainant and others, and have subjected said complainant and others to undue and unreasonable prejudice and disadvantage, in violation of the Act to regulate commerce.

The complainant asks that an investigation of these charges be made by the Commission, and that defendants be required to desist from further practice of the said alleged unjust discriminations and undue preferences, and for general relief.

Both defendants filed answers in which they, in substance, admit the allegations of the complainant as to the business conducted by him and their own occupation as common carriers forming parts of a continuous through line from Chicago to New York under a general tariff of rates for the transportation of live stock. They deny all the allegations of the

complaint, both general and specific, showing or tending to show unjust discrimination or undue preference or other violation of law, and aver, in substance, that their only connection or arrangement with the Lackawanna Live Stock Express Company is that which arises from their contract with it of January 27, 1888, on file with this Commission and hereinafter set forth, and that said contract was entered into and carried out in good faith for the purpose mentioned therein.

From a large mass of testimony taken and written evidence, the Commission finds the material facts in this proceeding to be substantially as follows:

1. Jacob Shamberg, the complainant, resides in the city of New York, and for some time has been and is engaged in the business of buying live stock in the west and shipping to New York, where he sells for domestic use or exports the same, and conducts this business in competition with others. The defendants are common carriers engaged in interstate commerce as parts of a continuous through line from Chicago to New York, and transport live stock between said points under a joint tariff of rates.

2. Schwarzchild and Sulzberger are engaged in the same business as complainant at 45th Street, East River, New York, where they have a dock and stock yards; and June 9, 1887, said Schwarzchild & Sulzberger (hereinafter designated "S. & S.") and the defendant the Delaware, Lackawanna & Western Railroad Company made the following contract:

"Agreement made and entered into this ninth day of June, one thousand eight hundred and eighty-seven, between the Delaware, Lackawanna & Western Railroad Company, party of the first part, and the Schwarzchild & Sulzberger Refrigerator Company, Limited, party of the second part, witnesseth:

"The party of the first part hereby agrees to transport from their western termini, viz., from Black Rock, Buffalo and East Buffalo, to Hoboken, Jersey City and points within the limits of harbor lighterage in the harbor of the city of New York, all live stock owned or controlled by the party of

the second part, or which may be consigned to them, or delivered to the party of the first part for shipment to the party of the second part. For and in consideration of the faithful performance of the above described service the party of the second part hereby agrees to deliver, or cause to be delivered, at the aforesaid western termini of the party of the first part, all live stock owned or controlled by them for transportation to Hoboken, Jersey City or the city of New York, for which service they hereby agree to pay, and the party of the first part hereby agrees to receive, the same net rates of transportation as are paid and received for like service by either of the other lines running in connection with roads from St. Louis or Chicago. The live stock to be moved over the road of the party of the first part as rapidly as is now being done, and to be transferred from Hoboken to the foot of Forty-fifth street, East River, as promptly after its arrival at the former place as the weather and ice will permit.

"This agreement to continue in full force for the term of five years from the day of the date hereof.

"It is understood and agreed between the parties, that the rate of transportation to New York includes the transfer charge from Hoboken to Forty-fifth Street, East River, which transfer is to be done without extra charge.

"In witness whereof, the parties hereto have affixed their signatures the day and date first above written."

This contract was signed on the part of "S. & S." by F. Sulzburger, Treasurer, and on the part of the Lackawanna Road by B. A. Hegeman, Traffic Manager.

Under this contract the Lackawanna Road made free deliveries to S. & S. of all live stock delivered to said road for shipment to said firm or in their care. This service was estimated to have cost 3½ cents per hundred pounds. Free lighterage of cattle within the lighterage limits of the harbor of New York was not made by the other Trunk Lines, and the Lackawanna Road had no contract to make free lighterage except with S. & S. Some of the Trunk Line carriers are

the active competitors of the Lackawanna Road for the carriage of live stock from the west. At a meeting of the Trunk Line committee held April 6, 1889, a statement was made of these facts and that, inasmuch as this free lighterage was made by the Lackawanna Road alone, it was equivalent to a reduction by that company of the tariff on live stock. Thereupon said B. A. Hegeman, traffic manager of the Lackawanna Road, being present, stated that said railroad company, having no live-stock terminals of its own, felt justified in making deliveries in New York City, the same as the New York Central Railroad, and that the Lackawanna Road had a contract to perform this service which had nearly three years to run, referring to the above contract of June 9, 1887. At the time of this meeting of the Trunk Line Committee, the rate from Chicago to New York was 22½ cents per hundred pounds, and after discussion the committee agreed to make it 26 cents, being a raise of 3½ cents, with the option of free delivery within the lighterage limits of New York. The following resolution to that effect was unanimously adopted:

"*Resolved*, That it is the sense of this meeting that the cattle rates should be advanced as soon as possible to a basis of 26 cents per hundred pounds from Chicago to New York, with the option of free delivery within the lighterage limits of New York harbor."

Since the above action of the Trunk Line Committee, the Lackawanna Road has continued to make free deliveries to S. & S. as before, and has also allowed them 3½ cents per hundred pounds for yardage. This allowance for yardage had not previously been made. It is deducted from the regular tariff rate and added to the proportion of the Lackawanna Road, and the balance of the rate is pro-rated between the connecting lines. The 3½ cents is allowed to S. & S. on their own shipments as well as on shipments to others in their care and delivered to their dock on Forty-fifth Street, East River. S. & S. settle with the Lackawanna Road both for their own freight and for that shipped in their care, and as to the allowance to them of yardage by the road, no distinction is made

between cases where yardage is furnished for some length of time and where the cattle are simply unloaded and driven across the dock of S. & S. to some other yard. This is the custom of the yardage companies, the yardage charge being made in the latter case to furnish the means to keep the docks in repair.

S. & S. do not charge shippers in their care anything for the use of their dock and unloading facilities, but receive yardage in such cases from the Lackawanna Road. S. & S. in settling with consignees in their care charge them the regular tariff rates.

Prior to the time that the Lackawanna Road inaugurated this system of paying yardage to S. & S. it had not been done by the other roads, but after that time it seems that the other roads went into doing business in the same way in order to meet this method of the Lackawanna. And it further appears now that other roads do business in this way as well as the Lackawanna. But none of their tariffs show it, nor do the tariffs of the Lackawanna show it. It lowers the rates to the extent of the yardage—3½ cents per hundred pounds—and there is no reference or allusion to it in the tariffs of any of these companies.

It seems that prior to April 6, 1889, the rail carriers at New York made free delivery of certain other property, but did not make free delivery of cattle, and that the free delivery of cattle was brought about by the fact that the New York Central Railroad Company had stock yards in the city of New York; other roads terminating in Jersey City had stock yards there; but the Delaware, Lackawanna & Western had no stock yards, and under their arrangement with S. & S. they contracted to make free delivery of cattle at Pier 45, East River; and when this was brought to the attention of the Trunk Line Committee, it resulted in the adoption of the resolution above stated, that the rate from Chicago would be advanced 3½ cents per hundred pounds so as to cover free delivery of cattle. At that time none of the Trunk Line carriers at New York City paid yardage, but, as above stated, they resorted to this to meet the method of paying yardage by the Lackawanna.

Since May 2, 1889, by order of the Trunk Line presidents, all the Trunk Lines pay the charge of 3½ cents for yardage; formerly the charge for yardage was made by the yardage companies independently of the railroads, and was paid by the shipper. The shipper could not get his cattle except through the yards, as the railroads would not land them elsewhere, and if the cattle put their feet in the yards, yardage had to be paid. The Lackawanna Road pays yardage to others besides S. & S., but 75 per cent. or more of the yardage paid by said road is paid to S. & S.

While, as above stated, the cost of free lighterage by the Lackawanna Road to S. & S. was estimated at 3½ cents per hundred pounds, it is claimed that it in fact costs about 2 cents per hundred pounds. On the hearing the road refused to produce the contract between the road and the party (John H. Starin) who performed the service of delivery to S. & S. for the road. The above contract between the road and S. & S. was filed with the Interstate Commerce Commission September 17, 1890, after the date of July 7, 1890, when proceedings in this case were begun. The Lackawanna Road has no stock yards or live-stock terminals of its own, and cattle consigned to S. & S. or in their care are taken in the floats from the terminus of the road around the Battery to the dock and yards of S. & S., at Forty-fifth Street, East River.

The defendant, the New York, Chicago & St. Louis Railroad (known as the Nickel Plate Road) has no contract with S. & S. for free delivery to them, but since April 26, 1889, has paid its proportion of the 3½ cents, as per the following circular issued by its general freight agent, dated April 26, 1889:

"CIRCULAR No. 89—41.

"The New York, Chicago & St. Louis R. R. Co.,
"Office of the General Freight Agent.
"CLEVELAND, O., April 26, 1889.

"*To Agents and Connections:*

"The advanced rates on cattle to New York and Jersey City, effective May 1, 1889, cover a lighterage charge of three and one-half (3½) cents per 100 pounds, which please deduct before pro-rating, and add to proportion of the road east of Buffalo, by which the cattle are consigned.

"G. B. SPRIGGS,
"General Freight Agent."

The Nickel Plate Road, according to the testimony of said Spriggs, pays no part of any other terminal charges at New York and has nothing to do with the yardage allowance of the Lackawanna Road to S. & S. B. A. Hegeman, traffic manager of the Lackawanna Road, testified that 3½ cents yardage was deducted from the through tariff rates and added to the proportion of the Lackawanna Road, and that the balance of the tariff rate was pro-rated with connecting lines.

The firm of S. & S. was composed of Joseph Schwarzschild and F. Sulzberger, and also, for a time, of Samuel Weil, who was a brother-in-law of Sulzberger. About May, 1890, Schwarzschild sold his interest to Sulzberger and retired from the firm. Prior to his withdrawal he had nothing to do with the transportation business of the firm or with the Lackawanna Live Stock Express Company. About the middle of August, 1890, two months before the hearing, Weil also sold his interest to Sulzberger, thus leaving the latter the sole owner at the time of the hearing of the assets of S. & S. At the time of the hearing, and when Weil sold to Sulzberger, Sulzberger was in Germany and Weil was engaged under power of attorney from Sulzberger as manager of the business of S. & S. in this country. He was still acting in that capacity when the hearing was had.

As appears from the certificate of organization, duly recorded and filed in the State of New Jersey, the Lackawanna Live Stock Express Company was organized as a corporation under the laws of said State, with James Cavanagh, John M. Cavanagh and John Keim, all of Brooklyn, N. Y., as incorporators.

The incorporators named in the certificate of organization of the Express Company, the two Cavanaghs (father and son) and Keim, were friends of Weil and allowed their names to be used as incorporators at his request. Prior to the organization of said company, Sulzberger had interviews in reference to it with Weil, and also with Hegeman, traffic manager of the Lackawanna Road. At the time the Lackawanna Road was carrying stock shipped by S. & S. from Chicago to New York in ordinary cattle cars; and Sulz-

berger, calling Hegeman's attention to the fact that during hot weather the low tin roofs of these cars and the heat from the bodies of the animals caused them to perish, and that he (Hegeman) must get up a live-stock car that would prevent this loss. Hegeman thereupon secured patents from Washington and had a model car built in Buffalo, which was submitted to Sulzberger and the proper officials of the Lackawanna Road and the Nickel Plate, and approved. The Lackawanna Live Stock Express Company was then organized, January 6, 1888, as above stated; and January 27, 1888, about three weeks after its organization, the said Express Company and the defendants the Lackawanna and Nickel Plate Roads made the following agreement:

"Agreement made and entered into this 27th day of January, 1888, by and between the Delaware, Lackawanna & Western Railroad Company and the New York, Chicago & St. Louis Railroad Company, parties of the first part, and the Lackawanna Live Stock Express Company, party of the second part.

"1st. The party of the second p
the first part with not less than two
(400) live-stock cars, constructed
roofs and Bain's truck, to be of such quality and c
portation of live stock requires, and in every way
for which they are intended. Plans, or a model
parties to this agreement for their approval.

"2d. The parties of the first part, each for itself, hereby agree to use the cars of the Lackawanna Live Stock Express Company for the purpose of transporting such live stock over their respective roads from Chicago and other western points to the city of New York or its vicinity as may be furnished by the party of the second part.

"3d. It is understood and agreed that said cars are intended for regular and constant use over the railroads of the said parties of the first part, and that said parties of the first part are to be under no obligation to furnish stock for loading said cars, and are not to be required to take the same unless the live stock for transportation therein is furnished by said party of the second part.

"4th. Car repairs to be made on the same terms as are made to cars exchanged with other railroads under the rules of the Master Car Builders' Association.

"5th. The rate of mileage to be paid by the parties of the first part to the party of the second part for the use of its cars, whether loaded or empty, shall be three-quarters of a cent (¾) for each and every mile run. The mileage of the said cars shall be reported monthly by each of the parties of the first part to the said Lackawanna Live Stock Express Company, and mileage to be paid within thirty (30) days after such report shall be rendered.

"6th. The parties of the first part shall have the privilege of loading the cars with westbound freight, but not for points west of Chicago unless such freight is transferred at Chicago.

"7th. The railroad companies herein referred to, parties of the first part, shall not be liable for mileage, except for such as is earned on its own line.

"8th. This agreement shall be in force for a period of five (5) years from the fifteenth day of February, 1888."

This agreement was executed in triplicate and signed by James Cavanagh, President of the Lackawanna Live Stock Express Company; B. A. Hegeman, Traffic Manager of the Lackawanna Road, and G. B. Spriggs, General Freight Agent of the Nickel Plate Road.

No cars were supplied by the Express Company under this contract until about September 1, 1888. At that date 150 were put on; in October, 1888, the number was increased to 180; in November, 1888, to 200, and in June, 1889, to 250, the present equipment. The maximum number of cars, 400, specified in the contract has never been furnished by the Express Company, and though the live-stock business of the defendant roads has been and is sufficient to require them, they have never called for them or taken any steps to have them furnished. The number to be supplied over the minimum has been left to the discretion of the Express Company. Two hundred of these cars were built by the Railroad Equipment Company of New York and the remaining fifty by the Buffalo Car Manufacturing Company of Buffalo, under contracts with the Express Company, dated respectively April 24, 1888, and February 21, 1889.

In the contract with the Railroad Equipment Company for 200 cars, their agreed value was stated to be $630 each, and it was stipulated that 30 per cent. of the total agreed value, $37,800, was to be paid on delivery September 1, 1888, and from October 1, 1888, to September 1, 1893, both inclusive,

sixty consecutive monthly payments of $1,904.70 were to be made, amounting to $114,282. This amount added to the cash payment would make the sum of $152,082, which would be at the rate of $760.41 for each of those cars.

In the contract with the Buffalo Manufacturing Company for the fifty cars, their agreed value was put at $610 each, and thirty per cent. of the agreed value was to be paid on delivery of each twenty-five cars, making an aggregate payment on delivery of $9,150. The delivery was to commence and be completed in April, 1889, and from the date of average delivery twenty-four consecutive monthly payments of $945.21 each were to be made, aggregating $22,685. Adding this amount to the payments on delivery, the sum would be $31,835, and this would make the cost of each of the fifty cars $636.70. The total ultimate cost of the 250 cars would be $183,917, and the total cash and agreed price, $156,500.

The cash payments on delivery and subsequent installments have been paid by Weil as they fell due. The total other expenditures of the Express Company, consisting of car repairs and salaries of officers from September, 1888, to August, 1890, both inclusive, amount to $34,050.48.

The railroad companies have paid the Express Company car rental or mileage of ¾ of a cent from September 1, 1888, to September 1, 1890, the sum of $205,582.68. (About .54 of this was paid by the Nickel Plate Road and the balance, .46 by the Lackawanna Road. Deducting from this amount the expenditures for repairs and salaries, $34,050.48, there is left $171,532.20 as the amount earned by the Express Company in two years above current expenses. The life of a car is ten or twelve years; its depreciation in value and the amount of repairs required is much greater in its latter years, but such depreciation does not average over 10 per cent. per annum.

The live-stock transportation rate from Chicago to New York at the date of contract between the railroad companies and the Live Stock Express Company was 35 cents per hundred pounds. This had been the rate for over six months prior to the contract and continued until May 14, 1888. The following were the rates from July 1, 1887, to October 14, 1890:

Rates of Transportation on Live Stock from Chicago to New York.

July 1, 1887.....	35 cents	per cwt.....	to May 14, 1888
May 14, 1888.....	25 "	"	to June 25, 1888
June 25, 1888.....	16½ "	"	to July 4, 1888
July 4, 1888.....	14½ "	"	to July 5, 1888
July 5, 1888	12½ "	"	to July 7, 1888
July 7, 1888.....	11 "	"	to July 8, 1888
July 8, 1888.....	9½ "	"	to July 9, 1888
July 9, 1888.....	8½ "	"	to July 11, 1888
July 11, 1888.....	7½ "	"	to July 12, 1888
July 12, 1888.....	6½ "	"	to July 13, 1888
July 13, 1888.....	5½ "	"	to Aug. 31, 1888
Aug. 31, 1888.....	10 "	"	to Sept. 27, 1888
Sept. 27, 1888.....	15 "	"	to Dec. 19, 1888
Dec. 19, 1888.....	22½ "	"	to May 2, 1889
May 2, 1889.....	26 "	"	to June 16, 1890
June 16, 1890.....	24 "	"	to June 20, 1890
June 20, 1890.....	22½ "	"	to June 26, 1890
June 26, 1890.....	21 "	"	to June 30, 1890
June 30, 1890.....	19½ "	"	to July 3, 1890
July 3, 1890.....	18 "	"	to Oct. 14, 1890

The distance from Chicago to New York is 914 miles. The railroad companies pay the Express Company a mileage of ¾ of a cent both ways, loaded or empty, and the cars of the Express Company as a rule are sent directly back from New York without stopping them to take up traffic. The railroad companies, in addition to the mileage paid to the Express Company, pay, as before stated, 3½ cents per hundred pounds yardage to S. & S., and also 50 cents per car for loading to the Union Stock Yards at Chicago. The free delivery to S. & S. costs about 2 cents per hundred weight. The Express Company's cars carry 11 tons, and the cost of transportation is at least 3 mills per ton per mile.

The expenses per trip from Chicago to New York, on a car of the Express Company carrying 11 tons, paid by the railroad companies on shipments to or in care of S. & S., are:

1. Mileage for 914 miles to New York, at ¾ cts. per mile	$6.85½
2. Same on return empty	6.85½
3. Cost of free delivery at 45th Street, at 2 cts. per cwt.	4.40
4. Yardage at 3½ cts. per cwt. paid to S. & S.....	7.70

5. Stock-yard charge at Chicago for loading, paid by roads	$.50
6. Cost of hauling car 914 miles, at 3 mills per ton per mile	30.16
Total	$56.47
Earnings per trip on car carrying 11 tons at the rate of 26 cts. per cwt.	$57.20
Excluding the cost of hauling the car empty on the return trip, the profit per car would be	.73

The rate at the time the express cars commenced running was 10 cents per hundred pounds, and from that time up to October 14, 1890 (which is as far as the evidence extends), has been as high as 26 cents only from May 2, 1889, to June 16, 1890. The remainder of the time the rate has been much lower and the business has been done by the roads at rates considerably below the actual cost of transportation. It is admitted by the officials of the railroads who were examined at the hearing that under the rates prevailing since operations under the contract between the roads and the Express Company were commenced, the business has been unremunerative to the roads and has been conducted for a large portion of the time at less than the actual cost of transportation. As before stated, however, at the time the contract was made, and for over six months previous thereto, the rate had been, and for some time subsequent continued to be, 35 cents per hundred pounds, and these officials claim that no such cut in rates as has occurred was anticipated, and further that the contract has been beneficial to the roads, inasmuch as the rates would have been the same any how, and it has enabled them not only to retain business which would have gone elsewhere, but also, by the improved service, to increase what they had, and that this business so retained and acquired, while not presently remunerative, is prospectively so, on a probable advance in rates.

As appears from the figures hereinbefore given relating thereto, the earnings of the Express Company have been over 50 per cent. per annum on the capital invested, after

deducting the amount paid for car repairs and salaries, and not taking into consideration the depreciation in the value of the cars.

The mileage made by the cars of the Express Company is over twice that made by the ordinary live-stock cars. This is due to the following facts: *First*, that they are run exclusively on through trips from Chicago to New York, and not from intermediate local stations as the common cars are; *second*, they are sent directly back west without being detained for traffic west as the common cars are; and, *third*, the cattle can be fed and watered on board the express cars, without unloading for that purpose at Buffalo or elsewhere as is the case with common cars.

The mileage of $\frac{3}{4}$ of a cent, stipulated for in the contract, is the usual rate on exchange of cars, and with the mileage made by ordinary freight cars may not be too high, but on private cars so run as to make regularly a large mileage, would seem to be excessive.

The officers of the Lackawanna Live Stock Express Company are James Cavanagh, president, and his son, John M. Cavanagh, treasurer, and B. A. Hegeman, Jr., general manager. John Keim is a director, and acts as secretary. The Cavanaghs and Keim, as before stated, are the incorporators, and friends of Weil, and their connection with the Express Company was at the request of Weil. There are no other officers or directors. B. A. Hegeman, Jr., is a young man, the son of B. A. Hegeman, Sr., traffic manager of the Lackawanna Road; and before his appointment as general manager of the Express Company had been connected with the freight department of the Lackawanna Road. His salary is $3,500 per annum. At first it was $3,000 per annum. He received his appointment through or from Sulzberger, of the firm of S. & S. The Express Company has an office at Newark, New Jersey, in a building belonging to the Lackawanna Road, for which it pays the road no rent. This office is in charge of B. A. Hegeman, Jr., whose duty is to keep posted as to the position and repairs of the cars of the Express Company, and receive applications from shippers for their use. The Express Company has no president's or treasurer's

office, and no other office whatever, except that in charge of B. A. Hegeman, Jr., at Newark, and has no agent or representative at Chicago.

Through bills are not issued by the Express Company, but by the railroad company, and the latter fixes the rates of transportation and collects the freight charges. No account of the mileage earned by the express cars is kept by the Express Company, but it is kept by the mileage departments of the railroad companies. The Express Company has no yards or tracks of its own for its cars, but uses those of the roads. The express cars are treated in this respect in the same manner as the cars of the roads.

About June, 1890, the Trunk Line presidents agreed that they would not carry private cars over their lines. The president of the Lackawanna Road was present and voted for this, but reserved the right to run the cars of the Lackawanna Express Company. Since that time no other patent cars except those of the Express Company have been allowed to run on the Lackawanna Road for the cattle business. The Nickel Plate road receives and transports over its line all roadworthy patent cars that are offered.

The capital stock of the Express Company is put in the certificate of incorporation at $150,000, and divided into six thousand shares of $25 each. The cash capital on which the company is to commence business is $2,000, representing eighty of these shares, and they are assigned in the certificate of incorporation as follows: 70 to James Cavanagh, 5 to John M. Cavanagh, and 5 to John Keim. It appears that some of these shares of stock may be owned by these parties, but Weil is unable to say how many. There is no proof that any stock has been actually issued.

B. A. Hegeman, the traffic manager of the Lackawanna Road, having expended a great deal of time and labor in getting up designs for the express cars and a model car, was promised some of the stock by Sulzberger. The amount was not specified, and the stock has never been received by Hegeman. He has never directly asked for the stock, but about two months before, he testified, reminded Weil that it had

been promised him, and Weil told him it would be attended to after awhile. Hegeman testifies that he thought Weil's reason for postponing the matter was because a change was about to be made in the firm of S. & S., which firm, he supposed, owned a controlling interest in the Express Company. He concludes his testimony by saying that he looked upon the promise of stock as a "joke," that he did not intend to take it in consideration of his services, and that what he did was for the benefit of the Lackawanna Road.

Weil, the brother-in-law of Sulzberger, and manager of the business of S. & S., and who was a member of said firm to within two months of the time he testified—when he sold out to Sulzberger, leaving the latter sole owner of the business—was the main actor, in connection with Sulzberger, in organizing the Express Company, and claims to own a controlling interest in its capital stock. The stock has never been issued to him, although he made the cash or delivery payments on the express cars, and has also paid the subsequent installments of purchase money as they fell due. He claims that the stock will be issued to him when he desires it and testifies that the mileage earnings of the express cars are paid over to him by the treasurer of the Express Company.

Weil, having stated that he paid for the cars, was asked whether he made the payments with his individual money. In reply he said that he did not think this was any of the questioner's (Mr. Kernan's) business, but stated that the cars were not paid for with the funds of the railroads or of S. & S. Being then asked whether any portion of the money was furnished by Sulzberger, he said: "We" (Weil and Sulzberger) "are in business together in a good many things. Before that we went into a great many speculations, and I might have owed him something and I might not. But the money was paid by me." He was positive that Schwarzchild furnished none of the money, but could not be more positive as to Sulzberger than to say that he did not think Sulzberger had. He could not remember whether Sulzberger furnished him any money about the time of the payments as a loan or otherwise, or whether he had any of Sulzberger's money in his hands, and stated he had no books which would show. In

answer to the question whether there was any understanding between him and Sulzberger that Sulzberger should have an interest in the earnings of the Express Company, he replied: "He has not yet." Being further questioned he stated that he did not know what was in the future, not being "a prophet nor a prophet's son." On the question being repeatedly put whether Schwarzchild & Sulzberger had any interest with him in the Express Company, directly or indirectly, he each time replied: "They have no interest." Finally, being asked whether he meant indirectly, he said: "I mean they have no interest."

The cars of the Express Company are not used for the accommodation of shippers in general, but only for those whose names are furnished through B. A. Hegeman, Jr. Applications for the cars are required to be made through him at Newark, New Jersey, and are transmitted by him to the general freight agent of the Nickel Plate Road at Chicago, who then notifies the live-stock agent of the road at that point; but the railroad employees and commission men at Chicago make the contracts for shipments.

The complainant, Shamberg, about January 1, 1890, made application to the officials of the Nickel Plate Road at Chicago for shipment to New York of cattle then in the yards used by the road. His application was denied, on the ground, as he states, that the road would take no other cars but its own express cars, and was short of them, and had to protect their regular customers first, but, as claimed by the road, because of an unusual pressure of business, which caused the cars to run short. He claims that, pending said application, shipments were being made in the express cars for S. & S. of cattle that came to the road after his. When told that the road did not have the cars, he offered to get cars elsewhere, about four or five blocks from the yards used by the road, but the road refused to send for them, alleging that its locomotives were otherwise engaged. Shamberg, both before and since that time, has made shipments on the express cars, and those cars are ostensibly open to all who make application for them through B. A. Hegeman, Jr., at Newark, New Jersey, but practically they are withheld from

shippers in general, and limited in their use to a few. Ninety per cent., or substantially all, of the business done by the express cars is that of S. & S. and shippers in their care at Forty-fifth Street, East River.

Before instituting this proceeding Shamberg had interviews in reference thereto with Sterne and Eastman, who are operators in cattle in New York, and who agreed with Shamberg to pay a portion of the expense. He testifies that under existing circumstances they are doing business at a loss in competition with S. & S. and consignees in their care, and that since he discovered his losses he has discontinued the shipment of cattle from Chicago except for export. He has recently shipped cattle from Chicago over the Lake Shore and West Shore roads. The Pennsylvania and the Erie Railroads connect with the abattoir in Jersey City, which is his regular place of business; there is no such connection between the Lackawanna Road and that abattoir, and he can not get his cattle from the terminus of the Lackawanna Road at Hoboken without driving them through Jersey City to the abattoir.

On the facts shown the conclusions and opinion of the Commission remain to be stated. These are too plain to be the subject of any difficulty in this proceeding. The dock and stock yards of S. & S. at Forty-fifth Street are some distance from the terminus of the Lackawanna Road, and when the cattle of S. & S. are carried over by the road and unloaded on their dock the delivery to S. & S. is complete. If it be incumbent upon a common carrier of live stock under certain circumstances to furnish yardage, it is certainly not after delivery to consignee on his dock and in his own yard. The allowance of yardage on such a state of facts would seem to be a mere gratuity. We are of opinion and so find that the yardage allowance to S. & S. of 3½ cents per hundred pounds on their shipments of cattle is a reduction or rebate from the regular tariff rate, and as such forbidden by the Act to regulate commerce.

The rule seems to have been that this yardage charge, prior to the introduction of a different custom by "S. & S.," was made by the yardage companies independently of the rail-

roads, and was paid by the shipper. This yardage is now retained by S. & S., and none of it is paid to the shippers in their care. The railroad, in making the payment or allowance to S. & S. on shipments to others in their care, is paying a claim that these consignees, if any one, owe to S. & S., and which, in the absence of this payment by the road, they would have to pay S. & S. unless the latter relinquished it. The railroad is assuming and paying a yardage claim which accrues after it has made delivery of the cattle at some distance from its terminus, and for which the shipper alone is liable. This must be held to be a rebate or reduction from the tariff rates in favor of shippers in care of S. & S., and a violation of the Act to regulate commerce.

The Lackawanna Live Stock Express Company, if it be anything more than a nominal company or corporation, is not in fact an express company. It does no express business whatever. It is, at most, a car-furnishing company, and its sole revenue is from the rental of its cars. It has nothing to do with the making or collection of rates, issues no through bills, and has no employees in charge of its cars when in use. All these matters are in the hands of the defendant railroads, and the employees of the latter have charge of and run the express cars as cars of the road. They are, in fact, the cars of the road during the term of the lease.

The first person, according to the evidence, who broached the subject of procuring express cars, if not the formation of the Express Company, was Sulzberger, of the firm of S. & S., and he interviewed B. A. Hegeman, traffic manager of the Lackawanna Road, on that subject solely in the interest of S. & S. At the time of the hearing, Sulzberger was the sole owner of the business of S. & S., and he and S. & S. were practically one. He appears to have been the active and leading member of the firm prior to the retirement of Schwarzchild. And for some time, and within two months of the hearing, Weil, a brother-in-law of Sulzberger, had been a member of the firm of S. & S. After this proceeding had been instituted and about two months before the hearing Weil sold out his interest to Sulzberger, then and at the

time of the hearing in Germany. No reason or explanation is given of this sale.

As to whether Sulzberger, who is practically S. & S., has an interest, and if so, what, in the Express Company, Weil's testimony, to say the least, is very unsatisfactory. He (Weil) made the cash payments, one of $37,800, for the cars, and has paid the subsequent installments of purchase money as they became due, but is unable to state positively whether any part of these large sums were paid with the money of Sulzberger, and in effect says that such may or may not have been the case. The source from which a party using money gets it must be held to lie peculiarly within his own knowledge, and it is a legitimate, if not irresistible, inference from Weil's evasive and inexplicit statements, that in part, at least, Sulzberger's money was used. That Sulzberger had an interest in, if not a control of, the Express Company, is indicated by many facts and circumstances. Among others we note the facts that it was formed on his application for improved cars for the service of S. & S., and the only acting officer of the Express Company, B. A. Hegeman, Jr., son of the traffic manager of the Lackawanna Road, was appointed and his salary fixed by Sulzberger. B. A. Hegeman, Jr., knew of no one else in connection with his appointment, and applied to Sulzberger for a certain additional amount of salary and got it. Furthermore, B. A. Hegeman, traffic manager of the Lackawanna Road, testified that for his services in getting up designs and the model for the express cars it was promised him that Sulzberger would pay him in stock of the Express Company; he also states that it was said that Sulzberger would organize the Express Company, and that it was supposed that S. & S. owned a controlling interest in the Express Company's stock.

While Weil is the main actor in the formation of the Express Company, his name does not appear as an incorporator, officer or stockholder. He procured three friends, the Cavanaghs and Keim, to act as incorporators. They are also, respectively treasurer and secretary. Keim is the only director. There is no office of president, treasurer or secretary, and it does not appear that any are needed, as no duties seem to be attached to these

offices. No account of the mileage earnings of the Express Company is kept by the Express Company; that is left entirely to the railroads. B. A. Hegeman, Jr., who is styled the general manager of the Express Company, occupies as an office, free of rent, a room in a building of the Lackawanna Road in Newark, New Jersey. The real or most important business of the Express Company is done by Weil, who is not an officer, director or stockholder. He pays for the cars of the Company—its only property—and receives the earnings from their rental. The earnings of the Express Company have been over 50 per cent. per annum of its invested capital, on a cash basis, and it would seem that its stock would be valuable and much sought after; but there is no proof of the fact that it has been actually issued. Weil testified that the Cavanaghs did own some stock in the Express Company, more than five or ten shares each, but could not remember how much.

B. A. Hegeman, the traffic manager of the Lackawanna Road, devoted time and labor and rendered valuable service getting up designs and building a model of the express cars, and was promised that Sulzburger would pay him in stock. He has never got the stock, but about two months before the hearing reminded Weil that it had been promised him, and Weil told him that it would be attended to after a while. Hegeman concluded his testimony on this point by saying that he considered the promise as "a joke," that his conversation with Weil about it was "in jest," that what he did in getting up the express cars was for the benefit of the Lackawanna Road and that he did not intend to take the stock in consideration of said services.

Weil, although he claims to have a controlling interest in the Express Company, has never received any stock, but says he can get it when he desires it. His apparent indifference about the matter is readily understood in the light of the fact that, though not an officer, director or stockholder, yet the treasurer pays over to him the whole of the very large mileage earnings of the company.

The material evidence in reference to the Express Company,

and the relation of S. & S. and the defendants to it and to each other, had to be obtained from the employees of the defendants and from Weil. These matters were or ought to have been within the knowledge of these witnesses and susceptible of positive and clear proof exculpating the defendants if the facts were consistent with their innocence of the charges preferred by the complainant; but from all the facts and circumstances disclosed by the testimony of these evidently unwilling, if not hostile, witnesses, we are unable to resist the conclusion that the Lackawanna Live Stock Express Company is an independent company or corporation only in name; that it is in fact owned and controlled by Weil and Sulzburger, or S. & S., and that by the aid and co-operation of the railroad defendants it is operated in the interest of S. & S., and that it is a device gotten up by S. & S. and said defendants with the intent to evade the Act to regulate commerce by giving an undue and unreasonable preference or advantage to S. & S. and consignees in their care, and subject the complainant and other competitors of S. & S. to undue and unreasonable prejudice or disadvantage. The Express Company being practically S. & S., the contract between the railroads and S. & S., of January 27, 1888, is in effect a contract between the railroads and S. & S., and is in furtherance of said mutual design of the roads and S. & S. to evade the law.

By the action of the Lackawanna Road in refusing to take private or any other express cars on its line, the cars of the Express Company—in other words, of S. & S.—are the only improved cattle cars allowed to make through rates and trips over the lines of the defendants from Chicago to New York. The number of cars furnished under the contract is left to the discretion of the Express Company, or S. & S., and are not more than sufficient to do the business of S. & S. and consignees in their care, and as, under the contract, the Express Company—or S. & S.—are to furnish loads for the express cars, S. & S. are thus given a practical monopoly of the only improved through cars on the line of defendants. Notwithstanding the large profits made by the Express Company on mileage both ways, loaded and empty, paid by the roads under the contract, and the unremunerative if not ruinous

result of the business, under the contract, to the roads, they also furnish an office free of rent to B. A. Hegeman, Jr., the manager of the Express Company, at Newark, New Jersey, pay the loading charge of the stock yards at Chicago, pay S. & S. yardage on their own cattle and cattle shipped to others in their care, and through their employees transact free of charge most of the business of the Express Company. When it is considered that the Express Company is practically S. & S., the enormous amount of rebate allowed them under the contract, and the extraordinary advantages given them over their competitors, will be apparent.

This case illustrates in a marked degree some of the serious abuses and evils the Act to regulate commerce was intended to prevent. These abuses and evils are preferences in rates and facilities given by common carriers to large dealers in order to get their business. The rates of the large dealer are reduced by the carriers paying him yardage for his cattle and the cattle of others shipped to his care. The large dealer under the guise of an express company furnishes the carrier a large number of improved live-stock cars, being the only improved live-stock cars on the line of the carrier, for which the carrier pays a very high rental, and the large dealer determines as part of the arrangement who shall ship cattle in these cars, and who shall not, and of course it is determined the competitor of the large dealer shall not.

The large dealer selects a number of other cattle dealers, friends of his, whom he permits to ship cattle in his improved cars with him, and on their cattle he receives "yardage" from the carrier. Other cattle dealers are not permitted by the large dealer to enjoy with him this preference of quick transit, who suffer corresponding delays in the shipment of their cattle and losses in business resulting therefrom; but the large dealer has not these delays or the losses arising from them. The large dealer by this arrangement within two years is paid by the carrier a sum more than sufficient to pay for the entire cost of the improved stock cars and of their operation. A first-class gold mine would have to be valuable indeed to be more profitable than such an arrangement as this for the large dealer; and the value of it to him consists of the advantages

it gives him over other competitors, and the burdens it imposes in his favor on them and upon the carrier, no less than the fortune it gives him in money and property.

When the carrier is asked to explain and justify these anomalous results his reasons for it, as stated by himself, are that he needed improved stock cars and could better afford to obtain them from others at this rental than to furnish them himself; that while the arrangement has not been remunerative to him on account of the great reduction in cattle rates since it was made, yet that it has been beneficial to him in enabling him to develop his business, and that if he had not obtained this business by this method some other carrier would have done so. In other words, this purchase of the cattle-carrying trade of S. & S., by the Lackawanna Road, if rates had remained up, would have been all right for the carrier; though it failed to be profitable for the carrier as rates went down, yet that it enabled the carrier to increase and develop its unremunerative business.

The bare statement of facts found from the testimony of the witnesses in this case shows how extremely vicious and unlawful the whole scheme has been. But involving, as it does, property rights, we proceed to analyze these facts more particularly in the light of the statute, and in doing this the question to be determined as to whether the statute has been violated will be reached by considering the relation of one fact to another and the tendency of all the related facts to establish the conclusion. In the contemplation of the statute, any methods, however skilfully devised, by which an unlawful result is effected, become devices for the end attained. In a case of this kind the law deals with the results produced, and it is not material what means may be employed for the purpose. Whether the means be direct or indirect, open or covert, is of no importance if they in fact culminate in what the law forbids. The offense is fully seen in the final result, but, the result being unlawful, the condemnation of the statute falls alike upon the result itself and the means by which it is reached. When the ultimate thing done is unlawful, the steps for the purpose of its perpetration are equally unlawful, and the parties engaged in the transaction must be presumed to have

intended by their acts the breach of law that ensues as the necessary consequence.

The law in plainest terms forbids carriers to make or give undue preferences or advantages. This is a fundamental principle of transportation, and the equality of treatment intended by it is the underlying and paramount feature of the Act to regulate commerce. In fact, the notorious and general disregard of this principle by carriers led more than any other transportation abuse to the exercise by the Government of its constitutional power of regulation. The end in view is the public welfare, by enforcing an impartial service on the part of the chartered transportation agencies of the country, and preventing favoritism among competitors in business, that affords gain to one and subjects another to loss. If, under the ordinary rules of evidence, the facts in the present case make the conclusion reasonably satisfactory, that certain dealers have had exclusive advantages in business over their competitors through the action of the respondent carriers, an infraction of the law has been established.

The chief facts appearing on the record consist of certain transportation contracts, the acts of the parties under these contracts and the relation of certain dealers to the traffic carried under the contracts.

By the first contract, dated June 9th, 1887, the respondent, the Delaware, Lackawanna & Western Railroad Company, obligated itself to transport for a period of five years for the Schwarzchild & Sulzberger Refrigerating Company, from the western termini at Buffalo to Hoboken, N. J., and points within the limits of harbor lighterage of New York, all live stock owned or controlled by the contracting firm or which might be consigned to them or delivered to the railroad company for shipment to them, the transportation to be at the same net rates as charged by either of the other lines running in connection with roads from Chicago or St. Louis, and the stock to be transferred from Hoboken to the foot of 45th Street, East River, without extra charge.

In a little over seven months after the date of this contract, on January 27th, 1888, a new contract was entered into between the Lackawanna Live Stock Express Company and both the

respondent railroads, covering the transportation of live stock from Chicago and other western points to Hoboken for a period of five years, and the furnishing of cars for the purpose. The Express Company agreed to supply the contracting railroads with not less than 200 nor more than 400 live stock cars constructed in a specified manner. The railroads agreed to use these cars for the transportation of such live stock over their respective roads from Chicago and other western points to New York or its vicinity, as might be furnished by the Express Company. The cars, it was provided, were intended to be in regular and constant use over the roads of the respondents, but the railroad companies to be under no obligation to furnish stock for loading the cars, nor to be required to take them unless live stock for transportation should be furnished by the Express Company. It was further provided that the respondent roads should pay the Express Company for the use of the cars furnished at the rate of three-quarters of a cent a mile for every mile run, whether loaded or empty, but the railroads to be at liberty to haul freight back from New York in them as far as Chicago. This contract contained no provision in relation to lighterage in the harbor of New York, nor in respect to the payment of yardage for the live stock at New York.

There is no testimony showing that the first contract was cancelled or abandoned when the second was entered into, and the several parties to these contracts seem to have treated both as in effect and to have carried on business under them contemporaneously.

The acts of the several parties and their relations to the subject-matter of the contracts are now to be considered. Schwarzchild & Sulzberger (whether as a firm or as a refrigerating company does not appear and is not material) were, prior to and at the time of the making of both contracts, engaged in the live-stock business at New York and received their stock at Pier 45, East River. The first contract was made directly with them and covered the transportation of all live stock owned or controlled by them over the road of the Delaware, Lackawanna & Western Railroad Company from its western termini at Buffalo to Hoboken, and its free

lighterage delivery at Pier 45. There was in this contract no provision in respect to cars. There is some testimony in the case that Schwarzchild & Sulzberger desired better or improved cars for the transportation of their live stock, and some provision had been made by the Delaware, Lackawanna & Western Railroad Company for this purpose. Pursuant to some conversations or understanding between the railroad company and the said firm, steps were taken for supplying cars for the transportation of live stock. One Samuel Weil, a brother-in-law of Sulzberger, was, during all this time, interested in many speculations and business matters with Sulzberger, and their relations were so intimate that their money matters seem to have been common and no separate accounts to have been kept between them nor any settlements made.

Early in January, 1888, about seven months after the first contract was made, the Lackawanna Live Stock Express Company was organized nominally by Samuel Weil. It then had no property or assets, and only $2,000 of stock were subscribed for, and that by friends of Weil who acted as incorporators at his request. The new cars to be used under the contract were constructed through the agency of Weil. These were put in use as follows: by September 1st, 1888, 150; in October, 1888, 180; in November, 1888, 200. In July, 1889, the number was increased to 250, and there has been no increase since that time. The money for building the cars seems to have been furnished from the joint funds of Weil and Sulzberger, or the firm of which he was a member, though disbursed by Weil.

The business of the Express Company was all under the control of, and managed by, Weil, and the company had no office in New York City or at Chicago. It had an officer called a manager, a son of the traffic manager of the Delaware, Lackawanna & Western Railroad Company, who was furnished by the railroad company with a room for an office, free of rent, at Newark, N. J. His duties seem only to have been to fill orders for cars required at Chicago, and to keep a record of the cars. No stock has ever been issued by the Express Company, and no dividends declared. Nomi-

nally, the entire property of that company is owned by Weil. About the time that the respondents began to use the Express Company's cars, September 1st, 1888, Weil became a member of the firm of Schwarzchild & Sulzberger, and continued to be a member until July, 1890, after the petition in this case had been filed, when he transferred his interest to Sulzberger, and has since continued to be the sole manager of the business of that firm in the absence of Sulzberger in Europe, who had acquired the proprietorship of the business and assets of the firm.

The cattle carried in the Express Company cars have practically all been cattle for the firm of Schwarzchild & Sulzberger or for divers other firms doing the same business and whose cattle were consigned to the firm, under the designation "S. & S." with numerals added to indicate the firms for whom the cattle were intended. These different firms all received their cattle at Pier 45, East River, and instead of paying the railroad directly paid the transportation charge to S. & S., who settled with the railroad company. The railroad lightered the cattle free from Hoboken, the terminus of the road, to Pier 45, East River, and paid yardage to S. & S. at the rate of three and one-half cents a hundred pounds on all the cattle intended for S. & S. themselves. The Lackawanna Road also paid S. & S. like yardage for the other firms who had their cattle delivered there to the care of S. & S. The railroads also paid the Union Stock Yard charge of 50 cents per car at Chicago, and furnished on their tracks free storage room for the cars of the Express Company.

The effect of the contracts and course of business between the railroad companies on the one hand, and Weil and S. & S. on the other hand, is now to be considered. The cost of the 250 improved Express Company cars used by the road was $156,500 cash. The mileage paid by the railroad companies pursuant to the contract as compensation for the use of the cars, from September 1st, 1888, to September 1st, 1890, was $205,582.68. The entire expenses of the Express Company, including car repairs and salaries of its officers and manager, for the same period, were $34,050.48, leaving a net profit of $171,532.20. To this must be added the yardage

charge paid S. & S. The amount of this is not shown by the testimony, but at three and one-half cents per hundred weight for a carload of 22,000 pounds it amounts to $7.70 per car, and if the shipments averaged 100 carloads per week it amounts to $770 per week, or $40,040 per year. The proportions paid for yardage to S. & S. by the railroad and for the other firms receiving consignments in the care of S. &. S. do not appear.

To put the matter in another form, the effect may be looked at upon a single carload shipment. The car mileage for the round trip of a car is $13.71. The yardage paid is $7.70; total, $21.41. Assuming a round trip to be made in a week, the interest on the cost of the car for that period at six per cent. is 72 cents, leaving a net profit of $20.69. This represents substantially the advantage of S. & S. receive over other shippers on a single carload shipment, and they either have so much more profit if their cattle are sold at the market price, or they can sell at a correspondingly lower price than their competitors who are not so favored, and command the market.

During the period in question the transportation rates fluctuated greatly. The maximum rate was 35 cents per hundred pounds from July 1st, 1887, to May 14th, 1888, and the minimum rate was five and one-half cents per hundred weight from July 13th, 1888, to August 31st, 1888. The intermediate rates between these two extremes were mostly low. It is doubtful if any profit whatever accrued to the railroad, after deduction of the payments shown to have been made in this case, at a lower rate than 26 cents per hundred pounds. During much of the time, therefore, the cattle were carried in the Express Company cars at a very material loss to the railroads, but the car mileage and yardage continued to be paid by the roads, and the revenues from these sources to the parties receiving them suffered no abatement from the decline in rates.

These leading facts sufficiently indicate the nature and effects of the connection of the Express Company with the business of the carriers. It was a quasi partnership, of which the risks were taken and the losses borne by the railroads, and the profits went to the Express Company and

those for whose benefit it was created. The identity of interest of Samuel Weil, the nominal proprietor and controller of the Express Company, with the firm of S. & S. is apparent from the testimony. The facts of the case cannot be reconciled with any other hypothesis. The irresistible conclusion is, therefore, that the real beneficiaries of the arrangements and methods of business on the part of the railroads which have been described were the firm of S. & S., or those who were interested in that firm, and of these Mr. Weil was one; and furthermore, that the nominal Express Company and the contract made with it were only devices for the benefit of that firm, and by means of which, through the payments for car mileage and yardage, and the exclusive use of Express Company cars for S. & S., themselves and those consigning cattle to their care, that firm enjoyed preferences and advantages of very great pecuniary value, and which in the fullest sense were undue and unjust.

It is evident that questions of grave and far-reaching importance are involved in the disposition of this case, but they arise from the conduct of the carriers themselves, partly in failing to meet the reasonable demands of commerce in respect to improved and suitable vehicles of carriage, and partly in allowing shippers of certain traffic to supply their own vehicles on terms which almost invariably give large advantages to such shippers and subject other patrons of the road, who use the road's own equipment, to prejudice.

The manner in which a railroad may supply itself with equipment is not important. As has been said, in other cases, the law does not prescribe any mode, and it may be done by construction, by purchase or by hire, in its own discretion. A contract, therefore, to hire cars from a car-furnishing company, or to regulate the compensation by the mileage made, is not in itself unlawful, if it stopped there. It may be improvident and injurious to the road, as the contract in this case eventually proved to be, though evidently not foreseen when the contract was made. But improvident management of the road is primarily a matter of internal or corporate concern, to be dealt with by the corporators and its creditors among themselves. When, however, improvidence is

connected with undue and exclusive advantages given to certain shippers, it becomes a matter of affecting the public interests, and the law fastens responsibility upon the carrier for the consequences of its acts.

These public consequences bring the carrier within the domain of public regulation. In this case the offense of the carriers was not in supplying their roads with improved cars, but the vice of the transaction lay in making the arrangement with shippers and giving them a compensation for the use of cars that was excessive and amounted to a large rebate from the rate of transportation, and in confining the use of these cars to the favored shippers and those shipping to their care instead of supplying them equally to all who wished to ship in such cars. A carrier in its relations to the public acts within defined limitations. It must observe the rules of fair dealing, and not subject any part of the public with which it deals to undue prejudice. Its franchise is, in a sense, a trust to be used for the proper and impartial benefit of the public.

For this condition, the carriers themselves are responsible, and their acts and conduct are under investigation. The law does not require them to haul private cars of shippers, and least of all to divide their earnings with such shippers. If they haul such cars they do so voluntarily, and, as was said in Scofield *v.* Lake Shore & Michigan Southern Railway Company, 2 I. C. C. Rep. 90, 2 Inters. Com. Rep. 67, must be careful that their contracts do not become mere devices to evade the law. The purpose of the law is benign. It aims at justice, and is intolerant only of abuse, and, as cannot be too often said, impartiality, which is equality of treatment for those similarly situated with respect to the carrier, is the essence of justice.

It follows from what has been said that the respondent carriers have, by their conduct and the manner in which they have conducted their business, violated essential provisions of the law. They have, by the methods they have made use of, given undue and unreasonable preferences and advantages to some shippers of live stock, to the undue prejudice and disadvantage of the complainant and other shippers of like traffic, and whether this has been done by means of contracts

or obligations assumed is unimportant, as the agreements were subsequent to the Act to regulate commerce and subordinate to its provisions.

The unlawfulness of the acts of the respondents, as shown by the evidence, is the point determined. It is not necessary to consider whether any arrangement, or, if so, what arrangement can be made with a shipper for the use of his private cars for the carriage of his own traffic exclusively or of such traffic as he may control. These are questions to be met and considered when they arise. If the legitimate advantages of having traffic carried in improved cars are not deemed sufficient by the owner of the cars he cannot become a partner in the earnings of the carrier to make a profit on his car investment, and so acquire, by what is equivalent to a rebate in his rates, an advantage over other shippers of like traffic. And it is idle to say that a rule of this kind may check progress and prevent improvements of great value to commerce. The law does not check progress. It restrains abuses and leaves the whole field of progress open to the proper parties, the carriers themselves. If they fail to act, it is competent for the Government to require them to make such provision for moving any kind of traffic as may be deemed suitable.

The particular acts found in this case to produce the unlawful preference the statute condemns, are the payment by the railroads of the car mileage for the Express Company cars and the payment of yardage to S. & S. for their cattle. The lighterage of the cattle, without a specific charge therefor additional to the transportation rate, is a different matter. The geographical and physical condition of the port of New York are such that lighterage or transfers of cars by floats is indispensable. All roads are obliged to do it, more or less, and it is done for all kinds of traffic and for shippers generally. It is simply a necessity of the situation, and doubtless an inconvenience and expense that all would be glad to avoid if possible. The lighterage is part of the carrier's service, and the compensation for it is part of the rate charged. The discussion and rulings in this case, therefore, have no reference to lighterage in the harbor of New York.

The order of the Commission is that the respondent carriers cease and desist from giving unlawful preference and advantage to the firm of Schwarzchild & Sulzberger, or their successors in interest, in the transportation of live stock to New York City by the payment of car mileage for the use of Lackawanna Live Stock Express Company cars, or by the payment of yardage to the said firm of Schwarzchild & Sulzberger or their successors in interest, for the cattle transported for them.

THE BOSTON FRUIT AND PRODUCE EXCHANGE *v.* THE NEW YORK & NEW ENGLAND RAILROAD COMPANY, THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY, THE PENNSYLVANIA RAILROAD COMPANY, THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, AND THE LEHIGH VALLEY RAILROAD COMPANY.

Complaint filed May 17, 1890.—Answers filed June 11 to July 19, 1890.—Heard at Boston, Mass., July 22, 23, 1890, and additional testimony taken at Washington, D. C., July 31, 1890.—Briefs filed September 9 to October 23, 1890.—Decided March 19, 1891.

1. The words "common control, management or arrangement," as found in the first section of the Act to regulate commerce, defined and applied to the special facts of the case.

2. Section seven of the Act may properly be considered in construing the general jurisdictional clause of the first section.

3. Contracts and tariffs filed with the Commission under section six of the Act may be considered, although not specifically introduced in evidence on the hearing.

4. The Boston Fruit and Produce Exchange is a mercantile society, such as is described in the thirteenth section of the Act, and as such has the right to maintain a proceeding like the present, without showing special damage to itself.

5. Elements that will be considered in fixing the rates for the transportation of perishable fruit, under special circumstances, discussed and applied to the facts found.

6. The gist of the present complaint is that the rate on peaches from the Delaware district to Boston is unreasonably high and oppressive, and, the fact being so found, a reduction is ordered.

F. C. Manchester, for complainant.
R. D. Weston-Smith, for N. Y & N. E. R. R. Co.
R. M. Saltonstall, for N. Y., N. H. & H. R. R. Co.
James A. Logan and *G. V. Massey*, for Penn. R. R. Co.
R. W. De Forest, for Cent. R. R. Co. of N. J.
Francis I. Gowen, for L. V. R. R. Co.

REPORT AND OPINION OF THE COMMISSION.*

VEAZEY, *Commissioner:*

The complaint in this case was signed by several individuals and firms styling themselves "The Fruit and Produce Merchants of Boston," but at the hearing, as it appeared that these complainants composed a corporation, organized and existing under and by virtue of the laws of Massachusetts under the name of "The Boston Fruit and Produce Exchange," the complaint, without objection, was amended by the substitution of the said corporation as the party complainant, and the case has since proceeded in its name, and as if originally preferred by it.

Following substantially the phraseology of the Act to regulate commerce, it is alleged in the complaint that the several defendants are common carriers, operating their several lines of railroad "under a common control, management or arrangement for continuous carriage or shipment; and are engaged in the transportation of passengers and property, partly by railroad and partly by water," between the peach-growing districts in the States of Maryland, Delaware and New Jersey, and Boston, Massachusetts.

That along the lines of some of the defendant corporations fruit is collected on what are known as the "peach trains," which are advertised to leave Wyoming, Delaware (a place near the centre of the peach district, which was taken by the complainant as a convenient illustration), at about five o'clock in the evening, and to arrive at Jersey City before ten o'clock the following morning. The different peach trains from the peach-growing district pass over the lines of the Pennsylvania Railroad Company, the Central Railroad Company of New Jersey, and the Lehigh Valley Railroad Company to Jersey City, where the cars are transferred to the Harlem River, and are thence hauled to their destination *via* the New York, New Haven & Hartford and the New York & New England Railroads.

* NOTE.—Attention having been called, before an order was issued, to a misapprehension of the evidence and the claim of counsel thereon, bearing on a material fact, in the opinion as first drawn, it was modified and re-drawn as it now appears.

That the distance from Wyoming to Jersey City is about 168 miles, and the average speed of the train to the latter point is about nine and three-quarters miles per hour; that the transferring of the train across the river from Jersey City occupies about four hours; that the distance from Harlem River to Boston is two hundred and eight miles; that the rate of speed between those points is an average of fifteen miles per hour, and the average for the whole distance between Wyoming and Boston is about twelve miles per hour.

That the railroads charge two hundred and twenty dollars freight per car from Wyoming to Boston, and a *pro rata* amount from all points beyond Wyoming.

It was the charge of $220 per car, for the transportation of peaches, which was made the ground of complaint, but after this proceeding was commenced, to wit, on June 18, 1890, the defendants made a reduction of $30 per car, making the rate on a car of nine tons capacity $190, but leaving the rate at $220 per car of twelve tons capacity. It was the reasonableness of this charge which is now questioned.

By way of comparison, and as tending to show that this rate is unreasonable, it is alleged by the complainant that the carriers have in force a tariff on watermelons and sweet potatoes from Swedsburgh, Md., *via* the same route, at $48 per car; same commodities from Salisbury, Md., *via* same route and 53 miles beyond, at $72 per car; peaches from same section of country to Buffalo, New York, a distance of 47 miles more, at $150 per car; oranges from Sanford, Fla., a distance of 1,440 miles, at $195 per car; corn from Chicago, a distance of about 1,000 miles, at about $100 per car; watermelons from points in Georgia, a distance of about 1,300 miles, at $143 per car; sweet potatoes from Eastville, Va., 133 miles beyond Wyoming, at $95 per car.

The complainant in the petition anticipated some of the defenses which it was believed the carriers would interpose, but inasmuch as all these anticipated defenses (and many more) were really interposed by the carriers, it is unnecessary to abstract the complaint in that regard. The com-

plaint, however, admitted that the service was special both as to the fitting up of the cars and the schedule upon which the trains were run.

All of the defendants severally answered the complaint, and each raised in differing language the same question, among other things as to the jurisdiction of the Commission over traffic of this character. That of the Pennsylvania Railroad Company may be well selected from these answers as presenting this jurisdictional question, and it is as follows:

"This defendant admits that the said respondent corporations are common carriers engaged in the transportation of passengers and property, but expressly denies that they are under a common control and management, and avers that existing arrangements do not constitute an undertaking on the part of each corporation for the through carriage from point of origin to point of destination, but only contemplate the duty of prompt transportation by each of such carriers over its own line of railroad, which constitutes a link in the chain of continuous carriage, and a prompt delivery to the next succeeding carrier at the place agreed on for the interchange of such traffic; and that while a gross sum is collected as the measure of the charge per car for the whole carriage, this is done for the convenience of the shipper, and to facilitate the traffic, and such sum is, in fact, the aggregate of the local charges of the said several carriers, and for the service contributed by each in moving such traffic over its own line of railroad in the course of continuous carriage."

The defendants also claimed in their answers that the charge for the transportation of peaches was just and reasonable, because, as they averred, they were put to unusual expense in the carriage of the fruit under the circumstances which the traffic demanded, as follows:

1. All the cars intended for the service are withdrawn from the general freight service a considerable time before the maturity of the crop and sent to the shops to be especially fitted up for the service.

2. That the peach crop is capricious, some years abundant and others meagre; and the carriers are required, in order to be prepared for the uncertainty of the crop, to fit up and keep in reserve a much larger number of cars than is actually required when the crop comes to be marketed.

3. The outlay of twenty dollars for each car in fitting it up for the service.

4. The short duration of the period to which the traffic is confined.

5. The cars employed in the service are only loaded one way and must be returned empty, so that the rate charged in fact represents double the mileage between the point of receipt and point of delivery.

6. The return of all empty baskets without charge to the shipper and the loading and unloading of these baskets at the expense of the carrier.

7. That the traffic is conducted on special trains, which are afforded special rights of way and are moved at a high rate of speed.

8. The increased risk incident to the expense of transportation of a very valuable and perishable article.

9. The increased cost of motive power, for additional train crews, and for additional employees at terminal points of delivery.

10. As to the Pennsylvania Railroad Company the construction of auxiliary connecting lines of railway, at an expenditure of $450,000, for the expedition of the traffic, so as to avoid delay in the crowded yards and through the streets of the city of Wilmington.

The defendants in their answers contended that there was no analogy between the transportation of this particular fruit and that of water melons, sweet potatoes, oranges and corn, inasmuch as the latter articles are not so highly perishable as the former, and no such dispatch, care and expedition are required in their carriage to render them available for market. As to oranges and water melons from Florida and Georgia, the answers claimed that carriage by rail was confronted with active and vigorous competition by the water routes, and also that the carriage by a fast rail service of fruits and vegetables from the south had only been recently inaugurated, and conducted as an experiment and without adequate remuneration, in the hope that it might develop sufficiently to justify the establishment of the business.

It was also claimed in the answers that the speed of the trains from Philadelphia to Jersey City was at least fifteen miles an hour; that, although the average rate from

Wyoming to Jersey City, including stops, was only nine and three-quarters miles per hour, much time was absorbed in the making up and shifting of the trains at the various points where the cars were loaded, the whole train being made up from different stations.

It was admitted that the fruit was carried at a less rate per car to Buffalo, New York, than to Boston, but it was insisted that a very expensive feature of the Boston route is the ferriage of the cars from Jersey City, around the city of New York, to Harlem River, as well as the expense of handling the same at the crowded terminal of Jersey City, which was avoided in the Buffalo traffic, and that the service was not under substantially similar circumstances and conditions.

The material facts in the case are as follows:

The complainant is a corporation organized and existing under the laws of the State of Massachusetts. Its individual members are persons engaged in the traffic in peaches, other fruits and produce at Boston, many of them being patrons of the special peach-train service, concerning which it is alleged in this proceeding that the carriers make an unreasonable and unjust charge.

There is considerable confusion as to the freight charge upon peaches, owing to the fact that the tariff of the roads east of Harlem River give a rate on cars of 30,000 pounds capacity and less, charging the same by the carload, whether the cars were of nine, twelve or fifteen tons capacity. The Pennsylvania Railroad Company makes one charge in its tariff for cars of thirty feet and under in length, and another charge, $30 greater, for cars over thirty feet in length, and if the shorter cars contain more than 18,000 pounds of load, or the longer cars more than 24,000 pounds, a proportionate increase is made in the freight charge. The other defendants, viz., the Central Railroad of New Jersey and the Lehigh Valley Railroad, do not give carload rates, although it is obvious from the testimony that the traffic for Boston originating on their lines was more or less carried in carload quantities.

At the time of the bringing of this proceeding, the freight

charge from Wyoming to Boston, in cars of over thirty feet in length, was $250, and the rate on cars of thirty feet and under, which includes cars of nine tons capacity, was then $220, but, as above stated, after the institution of these proceedings the defendants made a reduction in the rate, so that afterwards, and when this case was tried, the minimum rate on cars of over thirty feet in length was fixed at $220 per car, twelve tons, and on cars of thirty feet and under at $190 per car, nine tons, from Wyoming to Boston, and a proportionately greater charge for freight from points beyond and for excess of twelve and nine tons respectively.

The tariffs in effect on the roads of the Central Railroad of New Jersey and the Lehigh Valley Railroad Company, under which the Boston business was transacted, from the principal stations of those roads, are shown in the following tables, together with the rate per ton per mile which these rates give to these carriers:

INTERSTATE COMMERCE COMMISSION,
AUDITOR'S OFFICE, February 18, 1891.

Rates on Peaches to Jersey City, N. J., via Lehigh Valley Railroad.

From	Rate per basket.	Rate per 100 lbs.	Miles.	Rate per ton per mile.
Bound Brook,	N. J.. 7	23⅓	33	14.14*c.*
Neshanic,	" .. 8	26⅔	44	12.12
Flemington Junct.	" .. 9	30	50	12
Landsdown,	" ..10	33⅓	57	11.69
Pattenburg,	" ..10	33⅓	63	10.58
Bloomsbury,	" ..11	36⅔	68	10.78
Phillipsburg,	" ..11	36⅔	76	9.64
Freemansburg,	" ..15	50	85	11.76

Rate from Freemansburg shown in tariff No. C H-7, August 20, 1887.

Rates from other points named shown in tariff No. C H-11, August 2, 1888.

No rates are shown on tariffs for carloads.

INTERSTATE COMMERCE COMMISSION,
AUDITOR'S OFFICE, February 18, 1891.

Rates on Peaches to Jersey City, N. J., via Central Railroad of New Jersey.

From	Rate per basket.	Rate per 100 lbs.	Miles.	Rate per ton per mile.
Fanwood,	N. J.. 7	23⅓	20.7	22.51*c.*
Bound Brook,	" .. 7	23⅓	30.2	15.43
Raritan,	" .. 7	23⅓	35.9	13
North Branch,	" .. 8	26⅔	39.4	13.53
Lebanon,	" .. 9	30	48.1	12.47
Annandale,	" .. 9	30	50.4	11.90
High Bridge,	" ..10	33⅓	52.2	12.76
Ashbury,	" ..10	33⅓	60.1	11.08
Springtown,	" ..11	36⅔	67.5	10.86
Phillipsburg,	" ..11	36⅔	72.3	10.14

Tariff No. S-49 taking effect July 25, 1888, and Supplements Nos. 1 and 2.

No rates are shown on tariffs for carloads.

It can hardly be claimed but that these rates, which were purely local, and evidently intended to cover small shipments, are grossly excessive when applied to carload lots for the Boston business. It is even difficult to see upon what ground these rates can be defended as local rates merely; but that question is not within our jurisdiction.

The freight charge on a car containing 925 baskets of tomatoes, from Paulsboro, New Jersey, to Boston, shipped July 16, 1890, was $55.20, but it appeared that this shipment was not by special train, although the car was especially fitted up for the traffic; it did not appear, however, that the car was fitted up by the carrier. It also appeared that the rate on peaches to western cities was as follows:

	Distance Miles.	Car 18,000 lbs.	Car 24,000 lbs.
Chicago	900	$210	$280
Cincinnati	725	196	262
St. Louis	1050	280	374

—and that the carriers charged on California fruit, *via* passenger train from Sacramento, 3,170 miles, $550, and by freight train from that city, nine and twelve days *en route*, at prices ranging from $313 to $376; in this traffic the carriers received pay for the return of the empty baskets.

In order to accommodate traffic concerning which complaint here is made, the first thing to be done was for the several companies to withdraw from their general business such a number of cars as they anticipated would be required in the ensuing peach season; not being able to foresee whether the crop would be meagre or otherwise, the tendency on the part of the railroad companies was to provide an excess of cars for the traffic.

The cars thus provided were apparently of nine, twelve or fifteen tons minimum capacity; it would seem from the tariffs and the notices thereon that shippers, in giving orders for cars, were expected to indicate the capacity of the cars required. These cars were then sent to the shops, where they were fitted up with horizontal partitions at a cost of twenty dollars for each car. These fittings were necessary for the careful and proper transportation of the fruit and prevented the use of the car for the transportation of other merchandise on their return trip.

In preparation for the movement of the crop expeditiously the railroad companies arranged between themselves for a continuous transportation from the initial station to Boston, the average rate of speed of the trains from Philadelphia to Boston being about fifteen miles an hour; these trains were made up in the section of the country where the fruit was produced, during the afternoon and early evening, so as to secure the freshest product, and the fruit was delivered in Boston, or was intended to be delivered, in the very early morning of the second day following, to enable the dealers to supply the market for that day. The Pennsylvania Railroad Company is put to some extra expense, by reason of the time consumed in making up a full train from the various stations, an expense in which the other carriers do not share; that company also has to transact this business through their crowded terminals at Jersey City and Philadelphia.

It is proper to remark in passing that a great deal of time was taken up unnecessarily on the hearing by the endeavor on the part of the complainant to show that at times in the past the service had not been performed with the expedition contracted for. This fact, assuming it to be fully proven, could have no bearing whatever upon the issue presented for the decision of the Commission. It is important for the dealers that the freight should be delivered at Boston in the early morning, and if a rate should be established by the Commission under which all future shipments should be made, and reduced from what the railroad companies themselves had established, on the ground that it had not been customary for the companies to fulfill their contracts as to the expedition of the service, such a report and finding would defeat the very object of complainant, because if the Commission should establish a rate and base a reduction on such a consideration, the carriers would have a right to continue the performance of the service in the unsatisfactory manner complained of, and the shippers would be without redress. Proof of past breaches of contract cannot have any influence upon the fixing of a rate that shall be just and reasonable; the rate must be fixed upon the assumption that the service will be performed within the time and with all advantages of a quickened schedule, precisely according to the offer of the carriers and the contract between the parties. In fact, the carriers showed in this case that the earlier defects in the service had been remedied and that the service was prompt and up to contract.

To bring about this quickened transit, combined time schedules for the movement of the trains were arranged between the several carriers; this required not only the furnishing of motive power at the terminals of the respective lines to make the service as nearly continuous as possible, but also an arrangement of the other traffic of the carriers to accommodate the special requirements of this traffic; experts in the train service and in the handling of the fruit were specially employed; a single freight charge was made, and although this amounted to the aggregate of the local rates over the various lines, the freight was either paid by

the shipper or by the consignee, and was divided up between the different carriers in accordance with some arrangement between themselves; the consigment was upon one bill of lading and upon one contract, in which, among other things, the initial carrier and the shipper agreed that the liability of all the carriers was "released" as to deterioration by decay. The same car which was loaded at the initial station was delivered in Boston with its original contents undisturbed.

For the most part the peach trains were entirely devoted to that traffic, but occasionally other cars were mingled with the peach cars and hauled over the road, when that could be done without interfering with the running schedule.

The peach crop is capricious, some years abundant and others meagre; as an illustration, in 1888 there were 517 cars of peaches from the section of the country about Wyoming to Boston, and in 1889 there were but 167 cars.

The season is always short; the cars are loaded but one way, and by reason of the horizontal fittings are not available for return traffic, except the empty baskets, which are sent back by fast trains, and are returned free and unloaded and distributed by the carrier.

A basket of peaches weighs about thirty pounds.

It is true that it was testified by some of the dealers that at this time, and latterly, the baskets were not returned free, but some of the railroad officials testified otherwise, and, while it is probable that the custom in regard to the return of the empty baskets has changed somewhat, still shippers do avail themselves to some extent of the privilege, and, whether they always do or not, the posted tariffs provide that the empty baskets may be returned free.

The distance from Wyoming to Jersey City is 168 miles, for which the Pennsylvania Railroad Company, in the division of the rate, receives $90 or $120 per car, according to the size of the car, as a minimum charge, as before stated. From Jersey City to the Harlem River the cars, without removal of contents, are transported by ferry. For this ferriage the defendant companies pay $10 per car, irrespective of the fact whether it is of nine, twelve, or fifteen tons capacity. The distance from Harlem River to Boston is 208 miles, and

the railroad companies participating in that portion of the haul receive $90 per car, irrespective of its capacity.

The evidence clearly showed that there had been for the past two years or more a constant increase in the amount of peaches carried in a car. Formerly the cars had a capacity of only 600 baskets, but in the year 1889 the great bulk of the business seems to have been done in cars of greater capacity, and in one instance, at least, the load was 1,100 baskets, making a total weight of 33,000 pounds. Counsel for the roads east of the river stated in regard to this feature of the traffic as follows:

"The peach train was first run through to Boston in 1875. At that time the rate from Jersey City to Boston was $130 a car, not to exceed 18,000 pounds. The amount charged remained the same up to the season of 1890; but it appears that the maximum weight allowed per car has been gradually increased to 30,000 pounds. This, of course, operates as a reduction in the cost of transporting peaches, as, in 1889, 1,000 baskets could be transported at the same rate for which 600 baskets could be transported in 1875.

"The tariff in effect the present year makes a reduction of $30 per car from the rate heretofore in effect, so that the rate per car of 30,000 pounds from Jersey City to Boston by special fast train is $100."

Counsel based this statement upon the positive and unqualified testimony of the General Superintendent of the New York, New Haven & Hartford Railroad Company.

But since the hearing, counsel for the Pennsylvania Railroad Company has called special attention to the tariff of that company which provides that an extra charge, above the highest amount on the tariff, is made when the car contains more than 24,000 pounds, or twelve tons.

The rate on all perishable freight, except berries and vegetables in barrels, not otherwise specified, between those points, was 80 cents per hundred pounds (there being no provision for car-load lots), by what was called "A Market Car Tariff, by Special Fast Trains," which would make a freight charge of $240 for 30,000 pounds.

The rate on berries by the tariff last mentioned was $1.20 per hundred pounds, or $360 for 30,000 pounds.

These facts which appear from the tariffs on file are given for purposes of comparison, and are only collaterally impor-

tant, as bearing somewhat remotely, perhaps, upon the reasonableness of the special rate which the carriers charge for the special service which is called in question.

As to the foregoing facts, there was but little conflict in the evidence, and but three questions are raised for the determination of the Commission, as follows:

First. Is the traffic subject to the Act to regulate commerce?

Second. Has the complainant corporation the right to maintain this proceeding?

Third. Is the established rate for the carriage of peaches, under the special circumstances described, unjust and unreasonable?

Upon the first and jurisdictional question it becomes necessary to inquire, what is the meaning of the words "common control, management or arrangement for a continuous carriage or shipment," as found in the first section of the Act?

Since the earliest history of railroads, it has been quite usual for several lines of railroad to organize through routes and through rates for transportation over the same, and to place this through business within the control and management of a single person or board of persons, and had the Act only used the words, "common control and management," it might be reasonably supposed that it was the intention of Congress to limit the jurisdiction of the Commission to that kind of business in which the carriers should segregate the through business from the local business and place it within the control of an independent board. It is quite apparent that Congress intended that the law should have a much wider scope and bearing, and this is evidenced by the use, in connection with the above-quoted words, of the word "arrangement," which is undoubtedly qualified by the preceding adjective "common."

The best lexicographers give the meaning of the word "arrangement" as

"The act of arranging or putting in proper order; that which is disposed in order; a system of parts disposed in due order; any combination of parts or materials; the style or mode in which things are arranged; preparatory measure or negotiation; previous disposition or plan."

It will be seen, therefore, that the word selected to convey the legislative intent is very broad and comprehensive. There need not be a control of the through line centered in a single source of authority, but if the different carriers have invited interstate traffic over their roads, which is intended to be continuous, and have arranged their business and put it in proper order so that the continuity of the shipment shall be preserved, have combined their several lines and by preparatory measures and disposition of their affairs have provided for the reception, carriage and delivery of the traffic, such business is plainly within the scope of the Act to regulate commerce.

Measured by the plain meaning of the words of the law under consideration, the jurisdictional question raised by the carriers, under the particular circumstances, must be decided adversely to their claim. The initial carrier furnished the shipper with a car specially fitted up for this kind of business; the peaches were transported over the different lines without breaking bulk and by the carload; special and through connecting time-tables were adopted so as to hasten the transit by combined and pre-arranged disposition, not only of this traffic, but with reference to the other business of the different lines; a single freight charge was made, and this the railroads divided among themselves in accordance with some contract between themselves; liability of the carriers for the deterioration by decay was "released" by the shipper in his dealing with the initial carrier, for all the others. These matters could not be disposed of in this way and the commodity transported without an "arrangement," within the meaning of the Act.

The case may well rest upon the principle announced in the cases of The Chamber of Commerce of the City of Milwaukee *v.* The Flint & Pere Marquette R. R. Co. *et al.*, 2 I. C. C. Rep. 553: 2 Inters. Com. Rep. 393, and Mattingly *v.* The Pennsylvania Company, 3 I. C. C. Rep. 592; 2 Inters. Com.

Rep. 806; and in commenting upon the many elements presented in this case, it is not intended to qualify the decisions of the Commission in those cases.

Besides these considerations, it is prescribed by section 7 of the Act as follows:

"SEC. 7. That it shall be unlawful for any common carrier subject to the provisions of this Act to enter into any combination, contract, or agreement, expressed or implied, to prevent, by change of time schedule, carriage in different cars, or by other means or devices, the carriage of freights from being continuous from the place of shipment to the place of destination; and no break of bulk, stoppage or interruption made by such common carrier shall prevent the carriage of freights from being, and being treated, as one continuous carriage from the place of shipment to the place of destination, unless such break, stoppage or interruption was made in good faith for some necessary purpose, and without any intent to avoid or unnecessarily interrupt such continuous carriage, or to evade any of the provisions of this Act."

In construing a statute, it is to be looked at in its entirety; each section is to be read and understood in the light of every other section. And this section above quoted enables us to read with a better understanding the words of the first section.

Upon the question as to the jurisdiction of the Commission, it was claimed in argument on the part of the Pennsylvania Railroad Company that it appeared from the testimony in the case that the railroads were not under a common management as to this traffic, but were operated wholly independently of each other, and that the freight rate upon this traffic was not a *through* rate; and on the part of the New York, New Haven & Hartford Company, it was claimed that "no evidence was submitted to show that the various companies were under a common management and control; . . . that there was no joint contract between the various companies; that there was simply a general understanding that each company would transport the cars containing peaches with the least possible delay."

By section fifteen of the Act to regulate commerce, the Commission are permitted to consider, not only the testimony of witnesses, but also "other evidence," and it is undoubtedly within the province of the Commission to consider, in

any case, the contracts and tariffs which are required to be filed with the Commission as provided in section six of the Act.

It appears from the official records of the Commission that the Pennsylvania Railroad Company, the New York, New Haven & Hartford Railroad Company and the New York & New England Railroad Company entered into a contract and filed the same with the Commission on the 5th of March, 1888, which contains provisions for the formation of a through interstate line; among other things this agreement contains the following:

"It being understood that the filing with the Commission of such agreed joint tariff of rates over two or more of the roads, parties to this agreement, or contemplated by it as connections, shall be construed as establishing through lines between points which may be named in such joint tariffs."

While this contract was not submitted in evidence on the hearing it would be improper for the Commission to ignore its existence or the fact that under that agreement the Pennsylvania Railroad Company filed a tariff taking effect July 5, 1889, and subject as therein stated to change without notice, except such as is required under the Interstate Commerce law, and which was expressed to remain in force until revoked. It was stated in that tariff that shipments of the fruit would be loaded in through cars and go direct to destination; accompanying this tariff was a notice to the effect that the New England lines advised the Pennsylvania Railroad Company as to the rates on peaches which would apply to the traffic, and the tariff and said notice were posted in the stations as prescribed by the law.

In view of the above-named contract and the tariff and notice filed with the Commission and posted as required by the Act to regulate commerce, those of the defendants who were parties thereto cannot now maintain that this business was outside of the jurisdiction of the Commission, even if there were not other and controlling reasons why the traffic should be considered interstate traffic.

As to the second question which is raised, as to whether the complainant corporation has a right to maintain the pro-

ceeding, it is evident that the complainant is a mercantile society such as is described in the first clause of the thirteenth section of the Act. Such associations exist in nearly all the principal commercial centers of the country. It is a matter of common knowledge that they have for their object the bringing about of such results as will improve the commerce of their respective localities. The individual interests of each member, to a certain extent, are merged in that of all the other members, and this fact gives such associations a standing before the Commission which entitles them to be heard upon the subject of alleged unreasonableness of rates or other conduct on the part of the carriers which is contrary to the provisions of the Act. Certainly such associations are interested deeply in all questions affecting the transportation of commodities, and have a right to present subjects touching all questions upon that and kindred matters for the consideration and determination of the Commission. The complainant in the case, last year, represented a membership of 282 persons, and was one of the largest of the mercantile societies in New England.

It remains only to discuss the third question, whether the established rate for the carriage of peaches under the special circumstances described is unjust and unreasonable.

The complainant represents the dealers in fruit at Boston; they are the consignees only, and not producers and shippers. Questions relating to discrimination between localities in the producing district are not made in this proceeding. We are confined in our inquiry only to matters which are deemed pertinent from the standpoint of the consignee.

This branch of the case relating to reasonableness of the rate is really the gist of the whole proceeding. It is not claimed that there is discrimination as to localities or as to different dealers in the fruit, the contention being that the transportation charge in itself is unreasonable and excessive. As above found, the service was special throughout; the time of the trains was quickened; special time-tables providing for immediate connections were arranged, and the carrier put to the expense of a fast and continuous carriage; the cars were specially fitted up in such a way as to prevent their use for

the carriage of return freight; the baskets were returned free. Without recapitulating further the facts hereinbefore stated, it is evident that the carriers have a right to charge a special increased price for this special and optional service.

It was insisted that the proper test of the fairness of peach rates to Boston is by comparing them with the rate charged for similar service to other markets, and the rates charged by the defendants on other perishable products to Boston, and in support of the theory that the particular special rate under consideration was excessively high, unjust and unreasonable, the attention of the Commission was called to the tariff rate on the same commodity to other and western markets, and to the tariff on other perishable articles to the same market, concerning which tariffs the facts are hereinbefore stated. It is quite apparent, however, that it would afford but little light upon this question to compare the rates on perishable fruit, like peaches, carried on special trains under the special circumstances shown, with rates for other less perishable articles, such as oranges, sweet potatoes, water melons and other products of that character, or even with tomatoes, where those different articles were transported by the ordinary trains and upon the ordinary tariffs.

The comparison of the rates with those charged upon the same commodity and upon similar service to other markets may well be made, and the question which would arise would be whether the service was rendered under substantially similar circumstances and conditions. It was also claimed that the expense of fitting up the cars is so slight, as compared with the earnings for a car for the entire season, that it ought not to be taken into account, and it is undoubtedly true that, computing the number of trips that these fixtures make, and apportioning to each trip its share of the expense of the fixtures, the amount becomes nominal.

On the part of the defendants it was claimed that the special circumstances surrounding the carriage, demanded by its exigencies, fully warranted the special rate charged, and the attention of the Commission was called to all of those circumstances which imposed expensive burdens on the carriers in order to do the business; and the point was

urged that, as all the cars employed in the service were necessarily returned empty, the freight charge represents a double mileage; also that the peach rate, with this special service, was not unreasonable as compared with the rates on other fruits and vegetables carried on regular trains, which provided no special service, and the movement of which did not represent a double mileage.

As to the rate upon peaches to Buffalo, Chicago, Cincinnati and St. Louis, there should be noted this distinction in comparing the rates with the Boston rate, viz., that in the Boston traffic the cars had to be ferried from Jersey City to the Harlem River at the expense of ten dollars for each car. The expense of handling the cars at any terminal depends upon many considerations, but it is of course as great whether the car has passed over a longer or shorter distance. Stress was put in argument upon the fact of there being unusual expenses at the crowded terminals at Jersey City and Philadelphia, which were claimed without contradiction to be greater than such expenses at the western cities named. Other considerations urged were as follows: The fact that the Commission had held, in several cases, that the carrier has a right to make rates with some reference to the length of haul over its own lines; that as to peaches destined to these western cities, they were carried over lines of railroad operated by, or directly affiliated in interest with, the Pennsylvania Railroad Company, so that it received the benefit of the whole charge for carriage; that in this business the railroads were paid for the return of the empty baskets from the west, and the cars were not necessarily returned empty as in the case of the Boston traffic.

Considering the fact that the distance from Wyoming to Boston and return is 748 miles, and the other facts which go to make up the difference in the circumstances surrounding each kind of traffic, there is not so great a relative difference between the rates to Boston and the western cities named as at first would seem.

Upon all the facts which have been made to appear as to this special service, some of which are as follows: The increase of expense over ordinary traffic; the great value of

the product transported; the increased cost of the cars; the increased expense attendant upon the collection and making up of the trains at the different stations; the disarrangement of the other business consequent upon the quickened transit; the expense of ferriage at Jersey City; the expense arising from the use of crowded and costly terminals; the double mileage arising from the fact that the cars are necessarily returned empty; the return and distribution of the baskets free; the fact that the crop is a variable one and of short duration—it is considered that the carriers are entitled to greater compensation than they are for other species of traffic where some or all of these qualifying conditions are not present.

The foregoing facts show that the rate per basket, or per crate, or per hundred pounds, or per ton, would vary according to the amount loaded in, as well as the capacity of, the car, the rate being the same for a large car as for a small one, on the roads east of Harlem River. One thousand baskets, if carried in one kind of car, would cost the same for transportation over those roads as if but six hundred were carried. On the Pennsylvania Railroad, there was another method of arriving at the rate, which varied according to the length of the car, as above shown.

Under these diverse arrangements for this traffic, which was intended to be continuous as to shipment, it is impossible to say just what the cost per crate, or any other unit of shipment of peaches, has been, on the average, because it did not appear just how many crates or tons of the fruit were carried in a car, except in a very few instances.

Plainly, the peach trade is of an importance and character to require as much certainty as is practicable, as well for the freight charges as to the time of delivery to the consignees.

Transportation arrangements, for the best interests of both shippers and carriers, should be simple, uniform and definite.

The existing practice of having cars of different capacity for this traffic seems to be a good one, but we think there should be a definite price for a car of a given capacity for the whole distance unless loaded beyond the named capacity, and then for the excess a proper increase. It appeared that

in the prosecution of this business the companies have apparently withdrawn from their regular service, and fitted up for its accommodation, cars of nine, twelve and fifteen tons capacity, with a tendency during recent years to substitute those of the largest tonnage, and accordingly to prescribe a minimum rate on each kind of cars.

There seem to be good reasons, in the case of this special Boston traffic, for making the price per ton less in the larger cars than in the smaller; among which may be mentioned a saving in switching and other terminal expenses, in relative amount of dead weight to tonnage carried, in ferriage, which is the same for the larger as the smaller cars.

Where economy results to carriers thereby, they can, as they often do, charge a less amount per ton, where cars of larger capacity are used.

If a graduated rate should be prescribed of fourteen dollars per ton for traffic in cars of fifteen tons capacity, of sixteen dollars in cars of twelve tons, and eighteen dollars in cars of nine tons, this would make a carload rate for the fifteen-ton cars of $210, or 3.54 cents per ton per mile, for the twelve-ton cars of $192, or 4.02 cents per ton per mile, and for the cars of nine tons, of $162, or 4.48 cents per ton per mile—an average of 4.01 cents per ton per mile.

In making the above computations per ton per mile, the cost of ferriage, of ten dollars per car, is first deducted from the whole rate, and the computation is based on a movement in one direction only.

The rate on first class merchandise from Wyoming to Boston is 45 cents per hundred, or 2.389 cents per ton per mile, and the difference between that sum and the average above found, of 1.62 cents per ton per mile, represents the amount of extra compensation allowed to the carriers for the performance of this peculiar special service as compared with first class merchandise in ordinary trains.

We think that, taking Wyoming as a shipping point, illustrative of the subject, from which to fix a maximum reasonable rate to govern the traffic of all the defendants, on their business, in carload lots to Boston and Boston points, the carriers engaged in this transportation should adjust their tariffs

and charges so that the maximum charge, as to peaches carried in carload lots should be at the rate of fourteen dollars a net ton, in cars of fifteen tons capacity, and at the rate of sixteen dollars a net ton in cars of twelve tons capacity, and at the rate of eighteen dollars a net ton, in cars of nine tons capacity, and, as to other stations, a greater or less rate, according to their respective distances from Boston, based upon the above maximum charges between Wyoming and that city, this charge to include the cost of ferriage between Jersey City and the Harlem River; and if cars are loaded beyond their specified capacity, a proportionate charge for the excess should be allowed. But for stations beyond Wyoming, the increase shall in no case be greater than the increase specified for those stations in the tariff of the Pennsylvania Railroad Company effective July 15, 1889.

HAMILTON & BROWN *v.* THE CHATTANOOGA, ROME & COLUMBUS RAILROAD COMPANY, THE LOUISVILLE & NASHVILLE RAILROAD COMPANY, AND THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY COMPANY.

Complaint filed May 22, 1890.—Answers filed June 17, July 5, 1890.—Heard at Chattanooga, Tenn., November 13, 1890.—Briefs filed December 26, 1890–January 16, 1891.—Decided March 19, 1891.

1. The rates on freight from interstate points to Kramer, Georgia, *via* the Chattanooga, Rome & Columbus Railroad, are made by taking the through rate to recognized "basing points," and adding thereto that local rate which will give the lowest combination. This method of determining a rate criticised, and, as applied to such traffic to Kramer, operates as an unjust discrimination against that locality.
2. All the carriers participating in the traffic, the rates for which were questioned in this proceeding, were not made parties, and the case, while showing that the through rates were discriminatory and unjust, failed to disclose sufficient facts upon which an accurate decision could be based, and accordingly it was held that the carriers who were parties to the proceeding, be required to adjust their respective tariffs so as to avoid discrimination against Kramer, and that the carriers who were not parties be summoned to appear and show cause why a like order be not issued as to the business in which they participate, unless their tariffs are voluntarily adjusted so as to avoid the discrimination complained of.

Adamson & Jackson for complainants.
W. M. Brooks for C., R. & C. R. R. Co.
Edward Baxter for L. & N. R. R. Co.
Clark & Brown for N. C. & St. L. Ry. Co.

REPORT AND OPINION OF THE COMMISSION.

VEAZEY, *Commissioner:*

The complaint alleges that the complainants are partners in the mercantile business at Kramer in the state of Georgia; that Kramer is the junction point of the Chattanooga, Rome

& Columbus Railroad and the Georgia Pacific Railway; that the defendants are common carriers transporting freight between Louisville, Kentucky, and Nashville, Tennessee, respectively, and Kramer, aforesaid, and also some freight which originates at commercial centres of the north destined to that place, and the complainants allege that the rates to Kramer from New York, Boston and Providence, and from Louisville, Evansville and Nashville, are discriminatory and unjust.

The answer of the Chattanooga, Rome & Columbus Railroad Company substantially admits the allegations of the complaint, except that it denies the charge of discrimination.

The answer of the Nashville, Chattanooga & St. Louis Railway Company admits that it has a traffic arrangement with the other defendants, but denies that it discriminates against the complainant, or the village of Kramer, and alleges that it does not participate in business from northern points, but does participate in business from Louisville and Evansville.

The Louisville & Nashville Railroad Company in its answer denies that it discriminates against the complainants or the locality at which they do business, and alleges that it does not participate in the traffic from the northern points destined to Kramer.

The facts established by the evidence are as follows:

The defendant the Chattanooga, Rome & Columbus Railroad Company, operates a line of railroad from Chattanooga, Tennessee, to Carrollton, Georgia; at Chattanooga it has a junction with the railroad of the defendant, the Nashville, Chattanooga & St. Louis Railway Company; this latter railroad connects with the railroad of the defendant the Louisville & Nashville Railroad Company, at Nashville, Tennessee.

The Chattanooga, Rome & Columbus Railroad connects at Chattanooga with the railroads of the East Tennessee, Virginia & Georgia system, the Queen and Crescent system, the Western & Atlantic Railroad Company and the Chattanooga & Southern Railroad Company; none of these last-mentioned roads are, however, parties to this proceeding.

The railroad of the Chattanooga, Rome and Columbus Rail-

road Company runs in a southerly direction through Rome, Georgia, distant 77 miles, where it crosses the East Tennessee, Virginia & Georgia system of railroads, through Cedartown, Georgia, distant 99 miles from Chattanooga, where it Crosses the East & West Railway of Alabama, through Kramer, distant 128 miles from Chattanooga, where it crosses the Georgia and Pacific Railway, which is a part of the Richmond and Danville system of railroads, and where the complainants have their place of business, and terminates at Carrollton, Georgia, distant from Chattanooga 140 miles, where it has a junction with the Central railway of Georgia.

None of these last-mentioned companies are parties to this proceeding.

Bremen is a small village of about four hundred inhabitants, situated 54 miles west of Atlanta. Kramer is a station on the Chattanooga, Rome & Columbus Railroad, in the town of Bremen, distant about three-quarters of a mile from, and east of, Bremen Station. Bremen Station is on the line of the Georgia Pacific road. The name Kramer, or Bremen, is applied indiscriminately to the locality, and the complainant's place of business is situated midway between the two stations.

The Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway Company are only interested in that business for Kramer which originates at points to the westward of Chattanooga, where the last-named company delivers the property for transportation by the Chattanooga, Rome & Columbus Railroad to destination.

The traffic which originates at New York, Boston, Providence or other northern points destined to Kramer is delivered to the Chattanooga, Rome & Columbus Railroad, either by the railroads centering at Chattanooga, under the control of companies not parties to this proceeding, or by the East Tennessee, Virginia & Georgia Company at Rome, or by the Georgia Pacific road at Kramer. This traffic may also reach these points by means of the coastwise steamers from New York to Savannah and thence by rail to destination.

The rates to Kramer, by the Chattanooga, Rome & Columbus Railroad and its various connections, are made by refer-

ence to the established rates to certain points called "basing points," and adding thereto the local rates from such basing points to intermediate points, such as Kramer, taking that combination which will yield the lowest rate, although the basing point used may be farther distant from the initial point than the destination. In the case of northern business, as appears from the testimony of Mr. Sloan, the General Freight and Passenger Agent of the Chattanooga, Rome & Columbus Railroad Company, the rate is obtained upon the basis of the Carrollton rate, but the rates from western points, Nashville, Louisville, etc., are based upon the Cedartown rates.

Shipments from New York to Kramer, Georgia, may pass over many different lines, all, however, making the same through rate. If the shipments pass over the lines affiliated with the Pennsylvania Railroad Company they might go either by way of Harrisburg or Alexandria. If by the former route the railroads forming the line would be the Pennsylvania Railroad, the Cumberland Valley Railroad, the Norfolk & Western Railroad, the East Tennessee, Virginia & Georgia Railway and the Chattanooga, Rome & Columbus Railroad. By the latter route the railroads forming the line are the same as by the other, except that the shipment would not pass over the Cumberland Valley Railroad, but would pass over the Richmond & Danville Railroad.

Another route between New York and Kramer is formed by the Old Dominion Steamship Company *via* West Point, Virginia, connecting there with the Richmond & Danville system; thence to Kramer *via* the Georgia Pacific division, or connecting with the East Tennessee, Virginia & Georgia system at Paint Rock, North Carolina, forming a connection at Chattanooga with the Chattanooga, Rome & Columbus Railroad.

Another route from New York to Kramer is formed by the Ocean Steamship Company to Savannah; thence by the Central Railroad of Georgia to Carrollton; thence northerly by the Chattanooga, Rome & Columbus Railroad to destination.

Still another route is formed from New York to Kramer by the Mallory Steamship Line to Brunswick, Georgia; thence

by the railroad of the East Tennessee, Virginia & Georgia Company to Rome and thence by the Chattanooga, Rome & Columbus Railroad to destination.

The route from Memphis to Cedartown, by way of the Georgia Pacific division of the Richmond & Danville system, would pass over the Memphis & Charleston division of the East Tennessee, Virginia & Georgia system to Decatur, Alabama; thence by the Louisville & Nashville Railroad to Birmingham, Alabama; thence *via* the Georgia Pacific to Kramer and thence northerly *via* the Chattanooga, Rome & Columbus Railroad to Cedartown.

With the exception of the Louisville & Nashville Railroad Company and the Chattanooga, Rome & Columbus Railroad Company, none of the foregoing carriers were made parties to this proceeding.

The rate from New York, Boston and Providence to Kramer, for first-class freight, is $1.33 per hundred, but to Carrollton, 12 miles beyond, it is only $1.30, while the rate to Cedartown, 29 miles nearer, is but $1.14, that rate being common to the recognized "basing points," Chattanooga, Rome, Cedartown, Atlanta and fifteen other places.

The rates for this territory are fixed by the Southern Railway & Steamship Association, and as will be seen from the following table the defendants have made a reduction in their freight rates for classes "C" and "D:"

Rates on Classes "C" and "D" in Cents per Hundred Pounds.

		May, 1890.		Nov. 16, 1890.	
		C	D	C	D
Louisville to	Kramer	37½	33	35½	31
	Cedartown	31	27	31	27
Nashville to	Kramer	30½	26	28½	24
	Cedartown	24	20	24	20

Testimony was introduced on the part of the complainants tending to show that certain rates participated in, not only by the Chattanooga, Rome & Columbus Railroad Company, but also by the Georgia Pacific Railway Company and certain other railroad and steamship companies, on freight destined to Kramer, were made in such a manner as to be obnoxious to the Act to regulate commerce, and it was shown

particularly that the rate on corn was eight and a half cents cheaper to Cedartown from Memphis *via* the Georgia Pacific Railway and the C. R. & C. Road, than to Kramer, although it passed through the latter place in its movement to Cedartown. But such other carriers, as appears above, were not made parties to this proceeding, and although the attention of the complainants was called to the fact on the hearing, they did not indicate a desire to amend the proceedings in that regard; consequently the Commission are unable in the present situation of the case to determine what the exact facts are relating to the traffic participated in by those carriers who are not parties. They are entitled to be heard on the question, before a determination is reached.

The distance from New York to Cedartown is 947 miles, to Kramer 976 miles, from which it appears that the carriers receive on first-class freight from New York to Cedartown $1.14 per hundred, and for the 29 miles to Kramer 19 cents; from Louisville to Cedartown is 432 miles and to Kramer is 461 miles; to the former place the freight rates on classes "C" and "D" are 31 and 27 cents respectively, per hundred pounds, while to the latter place they are 35½ and 31 cents; the distance from Nashville to Cedartown is 247 miles, to Kramer 276 miles, and the rates on those classes are, to the former place 24 and 20 cents respectively, and to the latter place 28½ and 24 cents.

The questions presented upon these facts are not new. The Commission had occasion in the case of *Re* Tariffs and Classifications of Atlanta & West Point R. R. Co., 3 I. C. C. Rep. 19, 46–49; 2 Inters. Com. Rep. 461, 470–472, to pass upon the same questions which are presented here.

In view of what was said in that case, it is unnecessary here to discuss the question of the propriety of the practice which prevailed so extensively in the territory covered by the Southern Railway and Steamship Association of making rates by adding locals to the established rate to "basing points."

The inherent defect in making these rates is that the railroad companies treat traffic intended to be continuous between interstate points as consisting of two kinds of ser-

vice, independent of each other, the one to the basing point on a through rate, and the other from the basing point to an intermediate point on a local rate.

In the present instance it appears that, following that method of making a rate on first-class goods from northern points to Kramer, a result is reached which gives a higher rate to Kramer than to Carrollton, although the latter place is 12 miles farther distant. This, as pointed out in the decision above referred to, is a violation of the fourth section of the Act to regulate commerce; the difficulty, however, in the present case is, that all the participating carriers are not parties so as to be reached by an order the Commission might see fit to make in regard thereto. And this same difficulty is present in regard to the other traffic from western points passing over lines of railroad controlled by companies not parties hereto.

As to those rates to Kramer, which are based upon the established rate to Cedartown as a "basing point," and adding thereto the local rate from Cedartown to Kramer, where the traffic passes over the lines of the companies which are parties, while it appears that the present rates complained of arrived at in that way are greater than they ought to be, the testimony of the complainants fails to disclose what rates would be just and reasonable, in view of all the circumstances surrounding the business.

The traffic from northern points to Kramer is through interstate business, on which the carriers receive $1.14 for about 947 miles of haul to Cedartown and 19 cents additional for the 29 miles further haul to Kramer, and only 16 cents additional for the 41 miles additional haul to Carrollton.

But the traffic is through traffic and passes over the whole line of the Chattanooga, Rome & Columbus Railroad to Kramer. The additional rate is out of all proportion to the rate to Cedartown, having regard to distance, and this operates as a discrimination against Kramer. The rate is also greater than to Carrollton, 12 miles further distant, and in this regard also discriminates against that locality.

Plainly, if a carrier charges $1.14 for 947 miles of haul on a continuous shipment, over the same line, in the same

direction and under substantially similar circumstances and conditions, a charge of $1.33 for 976 miles is unjust and discriminatory, and if $1.30 is charged for 988 miles, a charge of $1.33 for 976 miles is also unjust and discriminatory.

No question is made but that the local rate on traffic between Cedartown and Kramer, as seems to have been prescribed by the Georgia Railroad Commission, is lawful; the claim is that, being a part of a through rate, the additional sum charged from Cedartown to Kramer, and the less sum charged to Carrollton, not only as regards the northern business, but as to western business, is too much; in this we concur, but for the reasons above stated the Commission can go no further than to order that the rates to Kramer be readjusted and made reasonable, in accordance with the principles above laid down, by those carriers which are parties to this proceeding.

As to those carriers, par
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Kramer.

NEW ORLEANS COTTON EXCHANGE v. THE LOUISVILLE, NEW ORLEANS & TEXAS RAILWAY COMPANY.

Complaint filed March 26, 1889.—Answer filed April 20, 1889.—Heard June 27, 1889.—Brief for defendant filed July 3, 1889.—Decided March 28, 1891.

1. POSTING SCHEDULES OF RATES AND CHARGES.—Common carriers are required to post in their depots, stations and offices schedules showing the rates and charges for transportation in force on the routes of such carriers, as well on freight which is, as on that which is not, for export.
2. ORDER OF REPARATION.—Where a carrier corrects the inequality of rates complained of and thus makes all the reparation asked in the complaint, or that the Commission could afford, no order is required, and none will be issued.

B. R. Forman, for complainant.
Holmes Cummins and *John S. Blair*, for defendant.

REPORT AND OPINION OF THE COMMISSION.

MORRISON, *Commissioner:*

The New Orleans Cotton Exchange complains of the Louisville, New Orleans & Texas Railway Company and alleges that the charges of said railway company on cotton carried from Memphis and other places in Tennessee as well as from stations in Mississippi to its terminus in the city of New Orleans are considerably higher than the charges of said company on cotton from the same points to South Port, Louisiana, within the port of New Orleans.

That by means of such higher charges said railroad company gives undue advantage to cotton exporters doing business at Memphis, and subjects New Orleans exporters of cotton to unreasonable disadvantage, and that the business and traffic of merchants engaged in the New Orleans cotton trade are unjustly discriminated against by reason of the higher charges made on cotton shipped to the New Orleans station as aforesaid.

The complainants ask that said railway company may be required to carry cotton to New Orleans and to South Port at the same rates; that it shall discontinue the undue preference and unjust discrimination alleged against it, and that it may be required to publish or post its schedule of rates and charges in the Cotton Exchange and Board of Trade as well as in its stations in the city and port of New Orleans.

The Railway Company answering denies that the things alleged against it and complained of are in conflict with the provisions of the Act to regulate commerce; and denies that by law it is required to post for the inspection of the public in the Cotton Exchange, in the Board of Trade, or in its own depots, stations or offices at New Orleans or its seaboard terminus its through rates on business that does not either originate or terminate there; and further answering says that the cotton carried by it to South Port for export is carried under dissimilar circumstances from that carried to the city of New Orleans. And said railway company denies that its higher charges to the city of New Orleans as compared with its South Port charges more than compensate for the difference in the cost of the service; and denies that by its charges or otherwise it gives undue preference to Memphis shippers, or unjustly discriminates against the export or other business of New Orleans.

The facts ascertained on investigation are found to be that the New Orleans Cotton Exchange is a corporation of the State of Louisiana, composed of merchants, traders, dealers and exporters, some of them engaged in the business of exporting through and from the port of New Orleans cotton shipped from Memphis and other places over the road of the defendant railroad company, as well as cotton carried to New Orleans over other roads or by boat.

That defendant railroad company is a corporation and a consolidated company authorized and recognized by the States of Tennessee, Mississippi and Louisiana. It is engaged in carrying cotton and other property, as well as persons, over its line between Memphis and New Orleans and inter-

mediate stations. There are besides the defendant several other carriers of cotton by rail from the States of Tennessee and Mississippi to New Orleans. One of these is the Illinois Central Railroad Company, which has the shortest and most direct line between Memphis and New Orleans, the distance over its line being 394, while over the defendant's line the distance is from Memphis to New Orleans 456, miles.

That the defendant company has two depots or termini within the port of New Orleans, one where its general business is done, at the junction of Poydras and Freret Streets, in the city of New Orleans, about a mile from the wharf or river-side, and the other at South Port on the river-side, near the city limits, about 3½ miles by rail from the Poydras Street station, and about 8 miles by river from the principal wharves of the city. "At South Port defendant has erected extensive wharves, piers, landings and side-tracks for interchange of freight traffic between its line and sea-going vessels." Having no line or track extending from its Poydras Street depot to the wharves and boat landings, its cotton and other traffic for export is chiefly carried and delivered to vessels at South Port, which is reached over a branch or lateral line or track about one mile in length.

That all freight carried by the defendant company to South Port is for export, and is chiefly if not entirely shipped on through bills of lading. The published rates and charges to South Port are the freight charges of the road for its share of the rate through from Memphis or other places of shipment to the foreign port of destination. The lines or tracks of other carriers, including the Illinois Central Railroad Company, extend to the wharves and landings over which lines and tracks such other carriers deliver freight for export at the ship side in the city of New Orleans.

That the charge or freight rate on compressed cotton in force when complaint was made, from Memphis to South Port, over the defendant's road was 63 31-100 cents per bale, the average weight of the bale being nearly 500 pounds. By arrangement, the vessel is ready to receive the cotton on its arrival, and there are no terminal charges either at Memphis or South Port. The rate from Memphis to New Orleans,

ship-side delivery, charged at the same time both by the defendant company and the Illinois Central Railroad Company, was $1 per bale. The schedule of rates established by said companies contained no statement as to any terminal charges or any rule or regulation changing or affecting said aggregate charge or rate of $1 per bale.

That the Illinois Central, having tracks to the river front, is enabled to deliver at ship side without terminal expense, while the defendant company pays a drayage expense of 15 cents per bale for conveying the cotton from the Poydras Street depot to the river-side. The consignee may take the cotton at the city depot for delivery at ship side and receive from the defendant company 15 cents reduction from the rate, leaving to the company 85 cents for the freight charge between Memphis and its New Orleans city depot.

That the cotton for ship-side delivery is billed to no particular vessel, and the railroad company is not informed of the vessel to which the cotton is to be delivered until it has reached the company's Poydras Street station. The bill of lading being assignable, the holder is not known to the railroad company, which must hold the cotton at its (the company's) own risk until notified how to dispose of it; and on arrival of the cotton at the company's New Orleans station the consignee receives a notice from the railroad company as follows:

"Notice is hereby given that if the above mentioned cotton is not removed from the railroad company's depot within twenty-four hours from the time consignees or their agent is notified of its being ready for delivery, same will remain at their risk and expense, and liable to be stored."

That the penalty for failure to have cotton removed after twenty-four hours' notice is seldom if ever enforced, and practically the cotton is stored in or remains at the depot, without cost to the consignee until it is his pleasure to have it taken to the vessel for export. When the sheds are full and storage room is short, cotton needs to be piled on skids and protected with tarpaulin covers, for which an occasional charge is made. Storage cost in New Orleans averages about 20 cents per bale per month, and, by an arrangement with the

Cotton Exchange, cotton may be ranged, sampled, examined, weighed and sold in the yards at yardage cost of 3 cents per bale.

Between September, 1888, and June, 1889, the defendant company carried to the port of New Orleans 360,521 bales, about 107,000 bales of which was carried from Memphis, and of this about 22,000 bales was carried to South Port, and 85,500 to New Orleans. Of that shipped to New Orleans for ship-side delivery some is forwarded promptly, while some remains in the custody of the carrier long periods of time, but the rates and charges are the same on all, without regard to the time of delivery.

That through rates from Memphis and other places to foreign ports are made by adding the ship's charges to the established rates from interior stations to the place of export.

That some changes have been made in the rates complained of since the investigation appears from the schedules of rates put in force and filed with the Commission, and the rate now in force from Memphis to South Port is 75 cents per bale of cotton, and is the same to New Orleans, both to Poydras Street station and to ship-side.

No evidence was offered pertinent to the prayer of complainant that the defendant may be required to post in its New Orleans stations, in the New Orleans Cotton Exchange and in the New Orleans Board of Trade the schedule of rates and charges for the transportation of property in force on defendant's road on cotton shipped from Memphis and other interior points to New Orleans, as well to South Port as to Poydras Street, and also its through rates on cotton shipped from Memphis and such interior points to the foreign port of destination.

The defendant virtually concedes that it does not post for public inspection its schedule of rates and charges on such through shipments in its New Orleans stations, including South Port, or in said Cotton Exchange or Board of Trade, and denies that the law requires that it should so publish or post its through rates on export business.

The statute requires that the schedule of rates on the route

of every common carrier shall be posted in two public and conspicuous places in every depot, station, or office of the carrier where its freight is received for transportation, and the places where any such carrier shall post its schedule of rates and charges in force upon its own route is thus prescribed by law. Having established cotton rates upon its own route from Memphis and other interior points to its New Orleans stations, including South Port, said defendant company is required by law to post its rate sheets in these respective stations, and the fact that freight is for export does not relieve the company from this legal obligation. In cases where freight passes over continuous lines or routes operated by more than one common carrier, and where such carriers have established joint tariffs of rates or charges, the Commission is authorized to prescribe the measure of publicity which shall be given to such rates and charges and the place in which they shall be published.

On the 8th of March, 1888, after due consideration of the measure of their publicity and the places in which joint tariffs shall be published, as well as the manner of making public the rates and charges on merchandise intended for export, this Commission ordered as follows:

Every tariff of rates and charges which a common carrier subject to the provisions of the Act to regulate commerce, by itself or jointly with one or more other carriers, whether such carriers are or are not subject to such Act, shall establish for the transportation of grain, flour, meal, meats, provisions, lard, tallow, canned goods, cotton, tobacco, live stock or other articles of customary export, from any point within the United States to a seaport thereof, or to any point in or on the boundary of an adjacent country, or to any foreign port or place, is required to be filed with the Commission and shall be made public.

In all cases where a tariff is established for such merchandise billed or intended for export by sea, and ocean rates are not specified, either because of their fluctuation or for any other reason, so that only the charge for inland transportation is definitely fixed, the tariff as filed and made public

shall show the rate charged by the inland carrier or carriers to the point of export, including all terminal charges or expenses, and shall also show in what manner the through rate to the point of ultimate destination is to be determined, whether by the addition of the ocean rate from time to time prevailing, or how otherwise. When the rate is a gross sum for the transportatien of freight from a point within the United States to a port or place in a foreign country, the tariff as filed and made public shall in every case show what part of the whole is allowed to the carrier or carriers for inland transportation to the point of export by sea, including all terminal expenses or charges; and if such part is subject to be increased or diminished, contingently or otherwise, or if in any other case the charge for inland transportation is subject to any change or modification in case the property carried is exported, the fact, and the manner in which the increase, diminution or change is to be determined, and the extent thereof, shall be stated.

Every such tariff of rates and charges shall be published by plainly printing the same in large type of at least the size of ordinary pica, and copies thereof shall be kept for the use of the public in such places and in such form that they can be conveniently inspected, at every depot or station of any carrier making or issuing the same at which any traffic to which it relates is received or delivered.

This order shall become operative on March 20, 1888.

The Commission thus prescribed that joint tariffs of carriers should be published in the same way and posted in the same places as provided by law in case of individual or separate carriers. Since said order was issued no sufficient reason has been shown why the publication of the schedules of rates and charges by it provided for does not make them so accessible to the public that they can be conveniently inspected, or why carriers over continuous lines operated by more than one company under joint tariffs should be required to post their tariffs and keep them posted in places, offices or buildings over which they have no control.

The difference in the rates of the defendant railway com-

pany to its two New Orleans termini, or stations, is the subject of the alleged unreasonable disadvantage and unjust discrimination of which complaint is made. This difference was on cotton shipped from Memphis when this proceeding was commenced, 36 69-100 cents per bale, the rate being to New Orleans city station $1, and to South Port station 63 31-100 cents.

The reparation or remedy which the Commission was asked to afford by its order was stated by complainant's counsel as follows:

"Now we ask for an order that this railroad company charge the same price for transportation to both termini. We care not whether they lower it to 63 cents for transportation to both, or raise it to a dollar for both."

Since the hearing and investigation of the matters complained of the defendant has established and now maintains the same rate on cotton from Memphis and stations on its line to its two New Orleans termini or stations, its rates being 75 cents per bale to both.

The defendant having thus conceded the propriety of correcting the inequalities of the rates complained of, and having made all the reparation asked by the complainant, or that the Commission could afford, no order will be made requiring the defendant to cease and desist from making a difference in its rates to its two New Orleans termini, now that no such difference is made.

An order will be issued requiring the defendant to post in its terminal stations at New Orleans, in convenient form for public inspection, the rates and charges in force on its route between its New Orleans termini and stations in Tennessee and Mississippi, as well on freight for export as on that which is not.

THE NEW YORK & NORTHERN RAILWAY COMPANY *v.* THE NEW YORK & NEW ENGLAND RAILROAD COMPANY, THE HOUSATONIC RAILROAD COMPANY AND THE NEW ENGLAND TERMINAL COMPANY.

Complaint filed July 12, 1890.—Answers filed August 4–6, 1890.—Hearing of testimony had at New York September 19, 20, 1890.—Hearing of argument had at Washington December 15, 1890.—Decided May 6, 1891.

1. DISCRIMINATION BETWEEN CONNECTING LINES.—The respondent, which is a carrier by a railroad running through the State of Connecticut to a point in New York, had had for some time a through billing arrangement and an agreement upon through rates for traffic over its own line destined to New York City, with petitioner's road, which connected therewith at its New York terminus. This arrangement respondent broke up, and declined to enter into any new one in its place.

The reason for breaking up the arrangement was that respondent had entered into a new arrangement with another road connecting with it at a point in Connecticut, whereby a New York City line was formed over which it was intended to take the business which formerly passed over respondent's line to petitioner's. It was not complained that petitioner's road was insolvent or not responsible for its contracts, or that the arrangement as before existing was unfair or unequal as between the parties thereto.

Such action of the respondent is held to be in violation of the second paragraph of section three of the Act to regulate commerce, which requires that "every common carrier subject to the provisions of this Act, shall, according to their respective powers, afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business."

2. INTEREST IN THE COMPETING LINE.—One reason assigned for breaking up the arrangement with petitioner was that respondent was joint owner with the road making the new line, of a terminal company for delivery of freight in New York. This interest is not an excuse under the statute for discrimination against petitioner's line, and this whether the

interest in the terminal company was large or small. Petitioner did not require or ask the services of the terminal company, but only to be allowed to continue as competitor for the business affected by the discrimination, and to offer its services to the public as such. It is found in the case that the public interest was injuriously affected by the discrimination.

3. TERMINAL DELIVERY BY AN AGENT.—It is of no importance to the question involved that after freight carried by petitioner's road reached High Bridge, in New York, its delivery from that point to the pier, which constituted the terminus of the carriage, was made by an agent or contractor employed for the purpose. Petitioner, being carrier for the whole distance, was entitled to the privileges given by the statute accordingly.

Sherman Evarts, W. A. Day and *Wm. C. Whitney*, for complainant.

Davenport & O'Hara and *Wm. H. Stevenson*, for defendants.

REPORT AND OPINION OF THE COMMISSION.

COOLEY, *Chairman:*

The petition in this case shows that petitioner is a common carrier engaged in the transportation of goods and merchandise partly by rail and partly by water between Pier No. 40 on East River, in the city of New York, and the village or town of Brewsters, in the county of Putnam, in the State of New York, and connecting at the latter point with the railroad of the New York & New England Railroad Company.

That the last-named company is a common carrier engaged in the transportation of goods and merchandise by railroad between points in the States of Rhode Island, Massachusetts, Connecticut and New York, and as such is subject to the provisions of the Act to regulate commerce.

That the defendant, the Housatonic Railroad Company, is a common carrier engaged in the transportation of goods and merchandise by railroad between points in the States of Massachusetts and Connecticut, and as such is subject to the provisions of the Act to regulate commerce.

That the line of road operated and controlled by the said Housatonic Railroad Company forms a connection with the road of the New York & New England Railroad Company at

Hawleyville, in the State of Connecticut, and runs from that point to Wilson's Point in the same State.

That the New England Terminal Company is a common carrier engaged in the transportation of property by water between Wilson's Point aforesaid and Piers 45 and 46, East River, in the city and State of New York.

That the defendants under a common control, management or arrangement for continuous carriage or shipment are engaged in the transportation of property partly by railroad and partly by water between points on the line of the said New York & New England Railroad in the State of Connecticut to Piers 45 and 46 aforesaid, and as such carriers are subject to the Act to regulate commerce, and together form what is known as the Housatonic or Wilson's Point route.

That the railroad of petitioner, in connection with the railroad of the New York & New England Company, forms the continuous and direct route between all points on the said New York & New England Railroad Company and the city of New York, and for eight years last past or thereabouts and ever since a short time after the extension of the New York & New England Railroad to Brewsters the said New York & New England Railroad Company has maintained with petitioner a joint tariff of through rates on all merchandise and goods shipped to and from all points on the line of the New York & New England Railroad west of Willimantic and from and to Pier 40, East River, in the city of New York, and all points on the line of the railroad of petitioner. This route is hereinafter referred to as the New York & Northern route.

That when the above-described arrangement was entered into the amount of business originating at or destined to points on the line of the said New York & New England Railroad was inconsiderable, and the facilities and equipment of petitioner were not adequate to handle and transport a large amount of freight, but relying upon the continuance of the arrangement and of the business, petitioner has from time to time expended large sums of money in the purchase of equipment, improvement of facilities and otherwise, so as to give efficient service in the transportation of through

freight under the joint arrangement above referred to, and as a result of such expenditure the business of through freight between points on the New York & New England Railroad and Pier 40 aforesaid over petitioner's railroad had become one of large proportions and the route had became an established and recognized route by shippers in New York City and on the line of the New York & New England Railroad.

That this route is far superior to and more advantageous to shippers and to the public interest than the route between the same points hereinafter described.

That the service furnished by petitioner was entirely adequate for the business and gave entire satisfaction to the shippers along the said route and to the management of the New York & New England Railroad Company, and as an inducement to the continuation of the business and the arrangement, petitioner had given most favorable terms to the said New York & New England Railroad Company in the arrangement entered into, and particularly in this, that while the proportion of charges between the two roads forming the continuous route was estimated on the mileage basis, petitioner accepted fifty-four miles as the distance of the land haul between Brewsters and High Bridge, and five miles as the distance of water haul between High Bridge and Pier 40, making a total of fifty-nine miles of transportation, whereas the actual distance between High Bridge and Pier 40 is nine miles and the total distance between Brewsters and Pier 40 is sixty-three miles; and furthermore that under the agreement this petitioner made no claim for constructive mileage to cover the additional cost and expense in water transportation.

That in or about the month of February, 1889, the Housatonic or Wilson's Point route was opened for operation between points on the New York & New England Railroad and said Piers 45 and 46, which said piers are situated a short distance from said Pier 40, which said route runs to the point of connection between the New York & New England Railroad and the roads operated and controlled by the said Housatonic Railroad Company at Hawleyville in the State of Connecticut, and thence by way of the Housatonic

Railroad to Wilson's Point in the State of Connecticut, and thence by water transportation by car floats, owned and operated by the New England Terminal Company, to said Piers 45 and 46.

That for some time after the opening of the said Housatonic or Wilson's Point route, the defendants above named transported goods and merchandise between points on the line of the said New York & New England Railroad Company in the State of Connecticut, and said Piers 45 and 46, under a common control, management or arrangement, providing for through rating and through billing by way of said route, not, however, discontinuing in any way the business and arrangement for through routing and through rates on the joint tariff by way of said New York & Northern route.

That some time in the year 1889 the said Housatonic or Wilson's Point route was discontinued temporarily, and on the 28th day of April, 1890, petitioner received notice from said defendant, the New York & New England Railroad Company, that the Housatonic and Wilson's Point route would be re-opened on the first day of May succeeding, and at the same time expressing the intention that the relations between the New York & New England Railroad Company and petitioner in respect to through rates and through routing would not be changed and that shippers along the line of the New York & New England Railroad would be enabled to ship by way of the New York & Northern Railway, if they chose to do so, on the same terms theretofore and at that time existing. A copy of this notice is attached to the petition. It is signed by the general manager of the New York & New England Railroad Company, who states therein:

"I desire to be perfectly free and open in regard to the subject, and will state to you that this company has a contract, which I find here upon my taking charge of the property, by which we have a route to New York by way of Wilson's Point, and to certain docks upon the East River, and on the first of May said route will be opened; but I am not aware that there will be any distinct instructions given, and do not believe that I will give any such order that will prevent business going *via* New York City and Northern, as heretofore, if the shippers upon the line of our road desire to so forward the same; we shall be ready at all times to receive from you any business that you may see fit to give us, and we wish to work with you in harmony

in the future; you must recollect that a contract is a contract, and under the circumstances it must be carried out in every respect.

"I would not advise that you make any improvements at present, until the matter develops itself further. The line *via* Wilson's Point, as I understand, is a good one, and as I have passed over it once, I feel satisfied with it, and believe that it can be made a source of revenue to our company as well as to the Housatonic, who are a party to the line, and are a party to the contract.

"I propose that the relations between your property and ours shall continue as amicable as they have been in the past, and any business that we can give you consistently shall be done, and we hope to work with you in a satisfactory way."

That on the 6th day of May, 1890, petitioner received notice from the New York & New England Railroad Company that on the 15th day of May, 1890, the said New York & New England Railroad would close the New York & Northern route to New York, and would withdraw their interstate tariff from the line of the New York & Northern Railway for all business originating at or destined to Pier 40 aforesaid, and that such action was rendered necessary by the terms of a certain contract therein referred to between the defendants above named or some of them respecting the shipment of merchandise by way of the Housatonic or Wilson's Point route.

That thereafter, and on or about the 9th day of May, 1890, the said New York & New England Railroad Company circulated among shippers along the line of its railroad a notice dated on the day last mentioned and signed by the company's agent in the following words:

"We have received notice that, taking effect May 16th, 1890, Joint Interstate Freight Tariff No. 2, in effect Jan. 21st, 1889, between all points upon the N. Y. & N. E. R. R'd, west of Willimantic to and including Stormville, N. Y., *via* Brewsters, and N. Y. & N. R. R'd, *will be withdrawn*.

"Thereafter regular tariff rates to and from Brewsters and stations upon N. Y. & N. E. R. R'd will apply.

"Shipments should be marked Piers 45 and 46 East River, *via* Hawleyville and the Housatonic R. R'd. This line is now giving perfect satisfaction, and is to be the only through line to New York."

That the said New York & New England Railroad Company also sent to each of its agents west of Willimantic a notice

bearing date May 10, 1890, signed by the general freight agent and in the following terms:

"Calling your attention to my circular of recent date, notifying you of the reopening of the *Housatonic Line* for business, you will please exert every effort to induce all shippers at your station to route their freight *via Wilson's Point, for delivery in New York at Pier* 45, *East River*. Special instructions will be given you by Division Freight Agent Bowman regarding the loading and forwarding of such freight, and we expect to make perfect time in either direction. This circular is simply to indicate to you that it is our *desire* to have all freight destined for New York from your station forwarded by this route, and when shippers express a desire for other routes, you will explain to them the advantages of this line and endeavor to get them to change their routing instructions. These instructions will, of course, be considered *confidential* and simply for your guidance."

That in pursuance of the said several notices the said railroad company has refused and still refuses to grant any through rates or through billing upon any merchandise originating at any of the points upon its said line west of Willimantic and destined for Pier 40 aforesaid, or any merchandise originating at Pier 40 on the line of road of petitioner and destined for any point upon the line of the said New York & New England Railroad Company; and, although frequent requests have been made by shippers to accept freight on through rates and to bill it through to Pier 40 by way of the railroad of petitioner, the said New York & New England Company refuses so to do, and has diverted all the business originating upon the line of its railroad from the railroad of this petitioner over the line of the Housatonic Railroad to New York by way of Wilson's Point.

That the town of Danbury in the State of Connecticut is situated upon the line of the New York & New England Railroad, and forms a point of juncture between the said New York & New England Railroad and the line of railroad operated and controlled by the said Housatonic Railroad Company, and is about ten miles distant from Brewsters.

That heretofore shipments of merchandise to and from a large majority of the merchants in Danbury were made by way of the petitioner's railroad and the New York & New England Railroad upon the joint tariff hereinbefore referred to, that road receiving its proportionate share of the charges.

That since the 16th day of May, 1890, the said New York & New England Company has refused and still refuses to accept freight between Pier 40 and Danbury upon through billing and through rating by way of the New York & Northern Railway Company, and charges to shippers from Danbury its local rates to Brewsters and compels shippers at Danbury to rebill their goods from Brewsters to Pier 40 in the city of New York; and similarly said New York & New England Railroad Company charges local rates upon all shipments originating at Pier 40 for Danbury, and compels a rebilling of the goods at Brewsters.

That said New York & New England Railroad Company has still further, by active efforts to that end through its agents along the line of its road and otherwise, and by their refusal as aforesaid to grant through billing and through rating to the shippers at Danbury, diverted all of the through business to and from New York City, originating at or destined to Danbury, from the line of the said New York & New England Railroad and the line of this petitioner, and turned it over to the line of the said Housatonic Railroad Company, and petitioner claims that this is an unjust, unfair and unreasonable discrimination on the part of the said New York & New England Railroad Company against petitioner and clearly contrary to the interests of the New York & New England Railroad Company, as it thereby deprives itself of any returns upon the business so shipped; and petitioner claims that it is entitled to equal facilities for the interchange of traffic with the said Housatonic Railroad Company as a connecting line with the New York & New England Railroad Company, and that the action of the said New York & New England Railroad Company deprives petitioner of reasonable, proper and equal facilities with the said Housatonic Railroad Company for the interchange of traffic between the petitioner and the said New York & New England Railroad Company, and for the receiving, forwarding and delivering of property to and from the line of petitioner and the line of the said New York & New England Railroad connecting therewith.

Petitioner further claims and alleges that the said New

York & New England Railroad Company by its action as aforesaid gives undue and unreasonable preference or advantage to the said Housatonic Railroad Company, and subjects the through business originating upon the line of its railroad, or destined from the city of New York to points on the line of its railroad, to undue and unreasonable prejudice and disadvantage.

Petitioner further alleges that the acts complained of are done by the defendants in pursuance of the terms of a certain tariff contract entered into between the defendants, or some of them, in relation to the traffic affected by the provisions of the Act to regulate commerce, and that said contract is exclusive in its nature and contrary to the provisions of the said Act; and petitioner prays that said contract be required to be filed with the Commissioners and that petitioner may be apprised of the contents thereof, in order that its rights may be determined and adjusted.

Petitioner therefore prays for an investigation, and that the defendants, and particularly the New York & New England Railroad Company, be directed and commanded to cease and desist from the acts above set forth, and that the said New York & New England Railroad Company be further directed to grant to petitioner the same and equal facilities for the interchange of traffic and for the receiving, forwarding and delivering of property to and from the line of petitioner and that of the New York & New England Railroad Company as are now accorded to the said Housatonic Railroad Company, or as were heretofore accorded to petitioner prior to the withdrawal of the said New York & New England Railroad Company from the arrangement and contract with petitioner above referred to; also that petitioner have other and further relief in the premises as shall to the Commission seem just and proper.

The answer of the New York & New England Railroad Company submits that the facts stated fail to show a breach of any legal duty on the part of respondent. It proceeds, however, to answer the facts.

It admits that the New York & Northern Railway Com-

pany is a common carrier of goods and merchandise, but denies that it is a common carrier for the transportation of goods and merchandise between Pier 40 on the East River, in the city of New York to Brewsters, in the State of New York, but alleges that it is under a contract with one John H. Starin for the transportation of freight from High Bridge in the city of New York, the terminus of petitioner's road, to said Pier 40, and that that is its only means of transfer between those points.

It admits that the several defendants are common carriers as stated in the petition.

It admits that respondents the Housatonic Railroad Company and the New England Terminal Company now form a direct and continuous route for the transportation of property between points on the line of the said New York & New England Railroad Company, in the State of Connecticut, and Piers 45 and 46 aforesaid, and by virtue of a joint tariff the transportation is under joint rates, but respondent denies that the said three companies are under any common control or arrangement.

It admits that at one time there did exist between the petitioner and this respondent a joint tariff by virtue of which through rates were established between points on the line of the respondent west of Willimantic and New York City on and over the line of petitioner, but denies that it is or ever was bound to maintain or continue any such joint tariff.

It professes ignorance as to the expenditures of petitioner for the benefit of the through transportation over the road of petitioner in connection with its own road.

It denies the advantages claimed for the petitioner's route and denies that the arrangements which for a time existed were altogether satisfactory and advantageous either to respondent or to the shippers.

It admits the opening of the Wilson's Point route and alleges that before the opening there existed no continuous and direct route by which goods could be transported from points on this respondent's line over and by way of the Housatonic Railroad to the city of New York, and that, in order to afford such accommodations for the transportation of

goods, the New England Terminal Company was organized in the year 1888 under the laws of Connecticut; that one-half of the stock, equal in amount to $100,000, was subscribed and paid for and is still owned by this respondent, and that the other half was subscribed for and is still owned by the Housatonic Railroad Company, and that the interest on the bonds of the said New England Terminal Company is and always has been secured by a guaranty by this respondent and the said Housatonic Railroad Company, and that such bonds so secured equal in amount $800,000.

That after the organization of the new company as aforesaid large sums of money were expended in the purchase of a means of transportation and in fitting up and equipping suitable docks and warehouses at Wilson's Point and Piers 45 and 46, New York City, and that by virtue of such expenditure the New England Terminal Company now possesses all the necessary means for the safe and expeditious transportation of goods from said Wilson's Point to New York City and together with the Housatonic Railroad Company makes an entirely safe and available route for goods shipped from points on the line of this respondent destined to New York City.

Respondent furthermore says it is a one-half owner of the stock of the said New England Terminal Company aforesaid; that it is to its great profit and interest that a large quantity of goods should be shipped over the line of the New England Terminal Company.

That for a time after the opening of the said Wilson's Point route respondent did continue to ship a portion of the goods sent from points on its line and destined for New York over the line of petitioner at rates agreed upon by petitioner and this respondent according to the joint interstate tariff formally entered into between them, and did before the re-opening of the Housatonic route on the 28th day of April, 1890, send word to petitioner with a notice attached to the petition that said route would be re-opened.

That said notice did not contain any agreement; that thereafter respondent did notify shippers of this new continuous route, and that goods thereafter shipped by way of

the line of petitioner would not be carried at the same rates at which they were formerly carried over this road, and did notify its agents along the line of its railroad to induce shippers to ship their goods over it by way of the Wilson's Point route, as it would be greatly to the advantage of said shippers so to ship their goods on account of the better facilities for the transportation of the goods offered by way of this line, and also on account of the through rates which existed by way of this line by virtue of the joint interstate tariff entered into between the respondents, and also because it is greatly to the advantage of this respondent to ship goods by the new route because of its ownership in the New England Terminal Company.

It admits the allegations in the petition regarding the town of Danbury and the shipments therefrom, but denies that its course in respect thereto is an unjust, unfair or unreasonable discrimination.

It admits the contract alleged to exist between itself and the Housatonic Railroad Company for the transportation of goods on or over the Wilson's Point route, and sets forth a copy thereof, and also a copy of the joint tariff for the transportation of goods on and over the Wilson's Point route.

An abstract of the answers of the other respondents is not given, as they present nothing not embraced above.

The following facts found to be true, in addition to those admitted by the pleadings, are important:

The New York & Northern Company used water transportation from Pier 40 in the city of New York, northward up the East River a distance of about nine miles, to High Bridge —still within the city limits. The cars are carried on floats between Pier 40 and High Bridge, and there is no break of bulk at the latter point.

From High Bridge to Brewsters, the point of intersection with the New York & New England, the New York & Northern extends northward a distance of about fifty-four miles by rail.

At Brewsters there are switches, side-tracks and the usual appliances for interchange of traffic between the two roads.

The New York & New England extends eastward from Brewsters through Danbury, Hawleyville, Waterbury and other manufacturing towns of Connecticut. Danbury is about ten miles east of Brewsters; and Hawleyville about six miles east of Danbury. The Housatonic road connects with the New York & New England at Hawleyville and at Danbury, and has lines extending from both these points about 25 or 30 miles to Wilson's Point, Connecticut, on Long Island Sound.

The New England Terminal Company carries the cars of the New York & New England and the Housatonic Railroad Companies on flats between Wilson's Point and Piers 45 and 46, New York City, about 40 miles. These piers are very close to the New York & Northern Pier 40. There is no break of bulk on the route.

Traffic for New York originating at or east of Hawleyville, on the New York & New England, is carried by the Hawleyville branch to Wilson's Point. Traffic from Danbury to New York by the Wilson's Point route does not pass over the New York & New England road at all, but is taken to the Housatonic Depot in Danbury, which is separate from the New York & New England Depot, and goes directly to Wilson's Point by the Danbury branch of the Housatonic. The rates between Connecticut points and New York City over the Wilson's Point route are not complained of as unreasonable, and are not shown to be so.

The New York & Northern route now asked to be opened is shown to have been decidedly more advantageous to Danbury shippers, while it was open, than is the Wilson's Point route, and there is evidence that it was somewhat more advantageous to shippers from Waterbury and Meriden—though from the two last-named places to New York City there are several through routes open. There is no through route now between Danbury and the central business parts of New York City except by Wilson's Point. Through rates and through bills are still given between, and including, High Bridge and points north thereof on the New York & Northern road, and points on the New York & New England road west of Willimantic. It is only the through routes and

rates to Pier 40 over the New York & Northern route that have been withdrawn.

The local rate over the New York & Northern between Pier 40 and Brewsters, on traffic to and from Connecticut towns, is the same now as its share of the through rates was during the existence of the New York & Northern through route. The locals of the New York & New England between Brewsters and the same Connecticut towns on such freight are several cents per hundred higher than were its proportions of the former through rates, the difference varying with the class of freight.

No claim is made in the case that petitioner is not entirely solvent and reliable.

The exact question presented in this case seems to be whether a common carrier subject to the provisions of the Act to regulate commerce which affords facilities for the interchange of traffic to a connecting common carrier extending beyond its own line, upon an adjustment of through rates lower than the sum of the local rates on the two lines, can refuse to afford like facilities for interchange of traffic and a like adjustment of rates to another connecting common carrier reaching the same ultimate destination and a competitor in business with the first connecting carrier, all the carriers being engaged in the transportation of interstate commerce and subject to the Act—in other words, whether in such a case a discrimination in affording facilities for the interchange of traffic and in rates and charges between the respective connecting carriers can lawfully be made. This inquiry involves an interpretation of the second clause of the third section of the Act to regulate commerce.

It is a question, therefore, of the proper meaning and application of the statute, and as presented in this case is purely a question of law. It is not embarrassed by any questions of fact that might warrant a different application of the rule prescribed by the statute. The business to which the controversy relates is interstate traffic; the several carriers in controversy are subject to the Act in the conduct of the business; the physical conditions for interchange of traffic with both the connecting lines are suitable, adequate,

and substantially equal. Both the connecting carriers have adequate transportation and terminal facilities for handling the traffic that is sought to be interchanged. There is no question of the financial responsibility of either of the connecting carriers for any engagement or liability connected with the handling of the traffic, and the public interests will be better subserved in many respects by an unrestricted use of both routes.

The provision of the Act upon which the complainant relies is the following:

"Every common carrier subject to the provisions of this Act shall, according to their respective powers, afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines."

It is contended for the defense that the relief asked can not be granted in consistency with cases heretofore decided by the Commission. The case of The Kentucky & Indiana Bridge Company *v.* The Louisville & Nashville Railroad Company, 2 I. C. C. Rep. 162; 2 Inters. Com. Rep. 102, is among those cited, but that involved other and different considerations both when before the Commission and afterwards when it was brought before the federal circuit court.

The case of Little Rock & Memphis Railroad Company *v.* East Tennessee, Virginia & Georgia Railroad Company, 3 I. C. C. Rep. 1; 2 Inters. Com. Rep. 454, did not involve the question of equal facilities or discrimination in rates and charges to points on petitioner's own line, but called for a decision upon the question of the right of a carrier to divert from a competitor traffic originating at and destined to points beyond its own line, thus in effect substituting petitioner's line for that of its competitor. In deciding this case in the negative, there was some discussion of the general purpose of the Act, and some comparison of the provision with that of the English statute, but the decision did not go beyond the point stated. It is tersely presented in the opinion of the Federal judge when the same case was brought before

that tribunal (41 Fed. Rep. 509, 563), where the following language was made use of:

"No discrimination against the traffic carried on by the plaintiff over its own line is claimed. The defendant company receives and carries passengers and freight that have come over, or that are destined to go over, the plaintiff's road, without any discrimination on that account; but its relation to such passengers and freight begins where they are received, and ends where the plaintiff's road receives them. What the plaintiff seeks to accomplish by this suit is a practical extension of its line over the defendant's line beyond Little Rock. The plaintiff's road extends from Memphis to Little Rock; the defendant's road extends from Memphis to Little Rock, and from the latter place south to Texas. The abstract justice of requiring the defendant to give up, for the plaintiff's benefit, all or a part of the advantages gained by the defendant by building a competing line to the plaintiff's road from Memphis to Little Rock, is not very obvious. Prior to the construction by the principal defendant of this competing line the plaintiff enjoyed a monopoly of the traffic between Little Rock and Memphis. Competing lines afford the best and surest protection the public can have against oppressive rates, and, however injuriously the business of the plaintiff's road may have been affected by the construction of the competing line, the public was not injured by it, and is not here complaining. Is it, under these circumstances, an unfair or unjust preference or discrimination for the defendant, in the sale of tickets, to prefer its own line to that of the plaintiff? If it is, the incentive to the construction of competing lines will be very much lessened. Roads enjoying a monopoly of a given traffic will be benefited, but the public will probably be injured."

The case of Mattingly *v.* Pennsylvania Company, 3 I. C. C. Rep. 592; 2 Inters. Com. Rep. 806, raised no issue of discrimination between connecting roads, but presented simply the naked question whether the defendant company could be required to perform an intermediate switching service in hauling cars from the terminus of one road to a junction point with another road, all within one State, to be delivered by the latter to still another terminal company for carriage to their destination, when the defendant in the case had facilities of its own to deliver the cars to the same final terminal company. No question of discrimination between different connecting carriers was therefore involved.

The case of Lehmann, Higginson & Company *v.* Southern Pacific Company and others, 4 I. C. C. Rep. 1; 3 Inters. Com. Rep. 80, was also one involving no question of discrimination between different connecting lines, but the Commission

was asked to order a through route, at through rates, over a main line and a connecting line crossing it at right angles, under circumstances that involved a variety of other considerations.

The case of Capehart and others, Owners of the Str. Coles, *v.* Louisville & Nashville Railroad Company, 4 I. C. C. Rep. 265; 3 Inters. Com. Rep. 278, was one in which the complainants were water carriers, not subject to the Act to regulate commerce, and under the language of the statute, which limits the prohibition against discrimination in rates and charges between connecting lines to the common carriers that are subject to the Act, the complainants were held not entitled to invoke the provisions of the Act to require a traffic arrangement to be entered into between themselves and the rail carrier. Whatever was said in that case is to be understood, of course, as applying to the case then under decision, and not any other in which the position of the parties relatively to the Act to regulate commerce might be different.

The Commission, therefore, is not embarrassed by these decisions, in the application of the law to this case, but may deal with it as in its opinion a just construction of the Act to regulate commerce shall require. Nor does the precise question now raised appear to have been passed upon by any one of the Federal courts. Shortly before the Act to regulate commerce took effect a question arose at the common law in the United States Circuit Court in Alabama, involving discrimination by a railroad company between two rival steamboat lines, and in disposing of the case upon demurrer to the complaint the court held that "where there are two rival lines of steamboats on a river, plying between the same points, and carrying freight for hire, both bearing the same relation to a railroad company and both seeking its services to forward their freight to the same points of destination, and the company systematically discriminates against one by charging it fifty cents a hundred more for freight than the other, it is liable in damages at the suit of the line so discriminated against." Samuels *v.* Louisville & Nashville Railroad Company, 31 Fed. Rep. 57.

The analogy between the essential features of that case and of the one before us is obvious; and if the decision there properly applies the principles of common law, the third section of the statute adopts those principles as the rules by which connecting carriers that are subject to the Act are governed.

It will be observed that the section quoted is one connected, comprehensive and radical provision of statutory law. The language all relates to the same subject-matter, and defines the duties of one carrier to another in the particulars mentioned. It firstly declares the duty of common carriers to afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines, and for receiving, forwarding, and delivering traffic to and from their several lines and those connecting therewith; and secondly declares that they shall not discriminate in their rates and charges between such connecting lines. The provision therefore embraces the imposition of an affirmative duty to interchange and forward traffic between connecting lines, and a prohibition that there shall be no discrimination in rates and charges between such connecting lines. There is no way of escape from the plain intent of these enactments. Reasonable, proper and equal facilities must be afforded for the affirmative duty, and there must be no partiality or injustice in the terms and conditions upon which this duty is performed — in other words, no discrimination in rates and charges. All the parts of this provision are of equal authority and obligation. They are the mandate of the same source of power. And it must be assumed that they are intended to have full and complete effect. It is a fundamental rule that a statute must be so construed as to give sense and meaning to all its parts.

What is meant, then, by the provision that carriers shall not discriminate in their rates and charges between connecting lines? Manifestly the thing prohibited is precisely what was decided to be unlawful in the *Case of Samuels*, before cited. To discriminate is to make a difference or distinction, and the difference or distinction may be made, as in the *Case*

of Samuels, by giving a preference or advantage to one shipper over another as regards different connecting lines. As a result of such discrimination a shipper may be compelled to use a line that for good reasons may be less desirable and less beneficial to him than another competing line; and, as a further result, a substantial monopoly of business may be established over one connecting line and serious loss inflicted upon another. Either of these involves a public injury. The statute in prohibiting such discrimination, therefore, had in view the prevention of the evils it produces. Unjust discrimination by a common carrier is defined by the second section of the Act to consist in doing a like and contemporaneous service in the transportation of a like kind of traffic, under substantially similar circumstances and conditions, at a greater or less compensation for one person than for another, being in substance a distinction or difference in rates and charges, with no dissimilarity in situation. The word "unjust" is not used in the clause under consideration in the third section. The prohibition is specific and unqualified.

When, therefore, the statute declares that there shall be no discrimination in rates and charges between connecting lines, it can only mean that no difference or distinction shall be made in rates that shall coerce the public to employ one competitor to the exclusion of another, or deprive one competitor of business that under freedom of selection by the public would be given to it, and thus create a monopoly in favor of another competitor. Unless this effect is given to the language of the statute it is only a meaningless enactment. It is not material that the true construction of this provision may heretofore have been in doubt, or even that it may have been misunderstood. The matter of importance is to ascertain the real intention of the statute, and to give that intention just effect.

This principle of equality in facilities and rates applies obviously where the conditions for interchanging with the respective connecting carriers are substantially equal. If these conditions are materially different, the dissimilarities created by the facts themselves may justly vary the application of the principle to correspond with the actual condition.

Discrimination occurs when a difference is made between connecting lines similarly situated. A difference founded on actual dissimilarities in the service, or in the convenience of interchange, and adapted to the difference in circumstances, is not discrimination. But a dissimilarity of this nature arises from physical conditions and not from business motives, and the discrimination made must be no greater than the different conditions will justify.

It is also to be noted that the prohibition against discrimination in rates and charges is something different from a provision to compel a contract for through rates and through billing, however natural a sequence they may be to interchanges of traffic for continuous carriage. The clause forbids a specified thing to be done, and it is no answer to this injunction to say that the Act does not authorize the Commission or the courts to compel carriers to enter into contracts. It compels them to desist from what the legislative authority regards as an abuse and public evil, and if as a result of compliance with the law amicable contracts between carriers are entered into, it is not a result to be deplored, but will be clearly in the public interests, and may well have been in the contemplation of the Legislature.

The statute, in forbidding discrimination in rates and charges between connecting lines, assumes that a carrier determines for itself, or in conjunction with another carrier, as the petitioner and the principal defendant did in this case, reasonable rates upon the traffic interchanged, and that the standard of reasonableness so voluntarily fixed becomes also the standard for interchanging with another carrier similarly situated. With the main duty, equality in treatment, enforced by the statute, the various incidents of interchanging through traffic, such as joint through rates and through billing, which are matters of economy and convenience both to carriers and to the public, are very likely to follow and to be worked out by the carriers themselves without the intervention of any public authority. Parties, whether persons or corporations, may naturally be expected to do what is manifestly conducive to their own interest. The objection, therefore, that neither the Commission nor a court has been

clothed with authority to require carriers to enter into contracts for continuous carriage at joint through rates and upon through bills, does not apply to the enforcement of the prohibition against discrimination in rates. That must be enforced because it is the law, and the matter of want of power to compel entering into contracts is irrelevent to the question. We are not to be understood, however, that a complaint of unjust discrimination in the matter of division of rates might not as fairly be within the jurisdiction of the Commission as the main question of refusal to make through rates at all.

The English statute, which doubtless suggested many of the provisions of our own Act, contains elaborate details in regard to the division of through rates and the mode of establishing them, but these are not in terms incorporated in our Act. The Railway and Canal Traffic Act of 1854, as re-enacted and extended in 1873, and again re-enacted and further extended in 1888, provides substantially (omitting reference to canals) that "every railway company . . . having or working railways . . . which form part of a continuous line of railway . . . or which have the terminus, station or wharf of the one near the terminus, station or wharf of the other, shall afford all due and reasonable facilities for receiving and forwarding by one of such railways . . . all the traffic arriving by the other, without any unreasonable delay, and without any such preference and advantage or prejudice or disadvantage as aforesaid" (that is, to make or give any undue or unreasonable preference or advantage to or in favor of any particular person or company or any particular description of traffic in any respect whatsoever, or to subject any particular person or company or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever); "and so that no obstruction may be offered to the public desirous of using such railways . . . as a continuous line of communication, and so that all reasonable accommodations may, by means of the railways . . . of the several companies, be at all times afforded to the public in that behalf."

And as amended and extended by the Act of 1888: "That the said facilities to be so afforded . . . shall include the due and reasonable receiving, forwarding and delivering by every railway company . . . at the request of any other such company, of through traffic to and from the railway . . . of any other such company, at through rates, tolls or fares; and also the due and reasonable receiving, forwarding and delivering by every railway company . . . at the request of any person interested in through traffic, of such traffic at through rates."

Various provisions for determing the through rates are then given in detail, and if the carriers do not agree the Commission is given authority to act in the premises.

The English statute, as is seen, in substance, prohibits any *undue* preference or *undue* prejudice to any person or company or any description of traffic between connecting carriers, and requires through rates to be established when demanded by another company or by a person interested in the through traffic. The more compact language of our statute, in providing that all reasonable, proper and equal facilities shall be afforded for interchanging and forwarding traffic, and that there shall be no discrimination in rates and charges between connecting lines, has the same general intent in view, and the intent should be given effect wherever the facts are such as to bring the case within the mandatory provisions of the statute.

It is unimportant that complainant employs another agency in the delivery of its freight from High Bridge in New York to Pier No. 40. It is a carrier to the last-mentioned point, and is entitled to rights as such precisely to the same extent that it would be if the agency made use of between the two points mentioned was owned and managed by itself.

We are clearly of the opinion, therefore, that what is prayed for in this case is within the mandatory provisions of the Act to regulate commerce, and that complainant is entitled to the relief asked for. The discrimination forbidden by the statute appears to us to be clearly proved. The defendant, the New York & New England Railroad Company,

interchanges interstate traffic with the Housatonic Railroad Company, which is also a carrier subject to the statute, from its point of connection with the former company, to New York City, and as a basis for the interchange agrees upon rates and charges upon which the traffic shall move over the two connecting lines. The same defendant, previous to the arrangement with the Housatonic Railroad Company, had agreed with the petitioner upon a basis for the interchange of interstate traffic destined to New York City and to other points on its line, but, for the purpose of the unlawful discrimination which it is now making, it refuses any longer to act upon such basis, and breaks up the through line which it before made with the complainant road. It abrogates all contracts or understandings it had with the petitioner in respect to the commerce before carried by the two roads on through rates, and the evidence leaves us in no doubt that it does so for the express purpose of discriminating in favor of another line as against the petitioner. The public is thereby deprived of a competing line which, according to the evidence, is desired by many shippers because in their opinion it has advantages in the transaction of their business, over the lines it competes with, but to which they are in any event entitled because the statute expressly gives the right.

Abolishing this basis and these understandings or contracts with petitioner was clearly illegal at the time it was done, and would have been so irrespective of the motive, since the right is not made to depend upon motive, or even upon the injustice of the discrimination, but is absolute. Nothing has taken place since the through line over the petitioner's road was broken which is advanced as now making it legal, if illegal at the time. It is not shown or pretended that in the arrangement as it formerly existed there was any injustice to the principal defendant, or that there would now be any in restoring it, unless it be found in the fact that the principal defendant has an ownership in the terminal company, which makes it for its interest to shut off, so far as may be possible, any participation of the petitioner in the through business passing over its line. This ownership appears to extend to one-half the stock in the terminal company, but it

does not appear to us to affect at all the legal aspect of the case. If an interest in the line discriminated in favor of can preclude the application of the prohibitive provisions of law, the amount must be unimportant; one per cent. of the stock would be as good for the purpose as fifty per cent., and the law could in any case be easily evaded. But it is sufficient to say that the statute makes no exception for such a case.

The judgment of the Commission therefore is, that the New York & New England Railroad Company is guilty of the discrimination charged in the complaint; that it discriminates as between connecting roads in its rates and charges for the interchange of interstate traffic and in the arrangements it makes for through lines for the freight traffic; that the allegations of the complaint in this particular are sustained; that the discrimination is to the prejudice of the public as well as of the petitioner, who is a connecting common carrier with the company named. This discrimination being in contravention of the statute, an order will be made that this defendant cease and desist therefrom.

BRAGG, *Commissioner:*

It has only been after a protracted and careful examination and consideration of all the facts in this case that I have been able to agree to the conclusion reached by the other members of the Commission; and I have done so upon the peculiar facts of the case. These facts substantially are that the petitioner and the New York & New England Railroad Company have already made all the necessary arrangements as to the interchange of freight at Brewsters, by switching improvements and otherwise, for the interchange of freight, and the through routing and through billing of the freight, so that they already have all the "powers" arising from these facilities and instrumentalities, without more, to through bill and through route freight, fixed and established by their own agreement heretofore. And in fact they are through billing and through routing it now from Brewsters to High Bridge, within nine miles of Pier 45, in the city of New York. The divisions of rates between them have not been complained

of in this proceeding, or shown to be otherwise than fair and just to each of them. Neither the Commission, therefore, nor a court would require any machinery to arrive at what these divisions of through rates ought to be or how the interchange of freight should be made, because all these things have already been determined by the parties themselves, upon a basis each deemed fair and just, and in regard to which neither of them have ever complained since.

These facts distinguish this case from the case of The Little Rock & Memphis Railroad Company *v.* The East Tennessee, Virginia & Georgia Railroad Company, 3 I. C. C. Rep. 1; 2 Inters. Com. Rep. 454; Mattingly *v.* The Pennsylvania Company, 3 I. C. C. Rep. 592; 2 Inters. Com. Rep. 806; and Lehmann, Higginson & Company *v.* The Southern Pacific Company, 4 I. C. C. Rep. 1; 3 Inters. Com. Rep. 80. None of these cases have been overruled by the decision in the present case.

The distinction between the present case and that of Capehart and Others *v.* The Louisville & Nashville Railroad Company and Others, 4 I. C. C. Rep. 265; 3 Inters. Com. Rep. 278, is very plain and marked. *Capehart's Case* was that of an independent water line operating on a navigable river with steamboats not subject to the Act to regulate commerce. Here the New York & Northern Railroad is a state railroad, but engaged in interstate commerce, and this whole contention relates to the transportation of interstate commerce; the New York & Northern Railroad Company, therefore, is, as to this business and this contention, an interstate carrier engaged in interstate commerce, as was decided by this Commission in the case of Mattingly *v.* The Pennsylvania Company, 3 I. C. C. Rep. 592; 2 Inters. Com. Rep. 454, and as was decided by the Supreme Court in the case of The Norfolk & Western Railroad Company *v.* The Commonwealth of Pennsylvania, 136 U. S. 114, 34 L. Ed. 394. It was decided in *Capehart's Case* that this independent water line was not one of the carriers subject to the Act to regulate commerce, and therefore not entitled to the benefit of the provisions of the second subdivision of section three of the Act to regulate commerce. If not part of an interstate line, part rail and

part water, Capehart's steamboat could not become an interstate carrier subject to the Act and entitled to the provisions of this section simply by engaging itself alone in the carriage of interstate commerce. The New York & Northern Railroad Company, although a state road, does not become an interstate carrier subject to the Act to regulate commerce by engaging itself alone in the carriage of interstate commerce, and thereby entitles itself to the benefits of this section. Nor has *Capehart's Case* been in any respect overruled by the decision in the present case; nor is it in conflict with the conclusion reached in this case.

When the first case involving the construction of section three upon this subject came before the Commission, viz., that of The Little Rock & Memphis Railroad Company *v.* The East Tennessee, Virginia & Georgia Railroad Company, *supra*, this Commission then said: "The Commission believes that it was *the intention* of Congress in the third section to substantially re-enact the requirements of the English Statute" re-enacted and extended in 1873, and re-enacted and extended in 1888, clothing the Railway Commission with power to establish through billing and through rates. Since that time I am not aware that there has ever been any difference of opinion among the Interstate Commerce Commissioners on this point, that such was the intention of the Act to regulate commerce. The difficulty was, as decided in the *Little Rock & Memphis Railroad Case*, above cited, that section three of the Act to regulate commerce had not provided the machinery necessary to clothe the Interstate Commerce Commission with the power to establish through routes and through billing where the carriers failed to agree.

In the judgment of the Commission it was necessary in the cases cited that the Commission should be expressly clothed with the power to put in use such machinery as would enable it to establish through routes and through billing. In this I am perfectly confident that the Commission was correct, and construed the statute correctly. But the intent of the statute being, as it expresses, that carriers "shall not discriminate in their rates and charges between such connecting lines;" and no necessity existing for the machinery to establish a

through route and through billing in the present case—it seems to me that it constitutes an exception to the rule laid down in The Little Rock & Memphis Railroad Company *v.* The East Tennessee, Virginia & Georgia Railway Company, *supra*, and comes within the intent of the statute.

To be perfectly plain on this subject, my view is that, under the statute as it now stands, if it should be necessary for the Commission to establish through routing and through billing between two connecting lines for the interchange of freight, where these lines had made no provision for anything of that kind, such as the necessary switching and terminal arrangements, and for divisions of through rates, in such a case the Commission could not order one of them, against its consent, to go to the expense of constructing necessary switches, and other terminal expenses, and to determine what divisions of through rates should be made between them, or to regulate the manner in which freight should be interchanged between them, and itself make such divisions.

In the case of The Little Rock & Memphis Railroad Company *v.* The East Tennessee, Virginia & Georgia Railway Company, above cited, it was said by the Commission: "In case the ferry transfer arbitrary and the proportionate divisions of the various rates can be agreed upon by the parties, it would be possible for the business to go forward at once." In the present case the parties have already agreed upon these proportionate divisions of the rates, and are actually through routing and through billing, as the evidence shows, from Brewsters to High Bridge; while it is equally true that the proportionate divisions of the rates as agreed upon for through billing and through routing between them from Brewsters to Pier 45, New York City, as reasonable and fair, and under which they long worked, have never been complained of by either of them, and have only to be put in force again.

No construction of the second subdivision of section three of the Act to regulate commerce, in my opinion, is sound and correct which fails to give the words "reasonable, proper," as these occur in the first part of the clause, a controlling weight in the construction of the following part of the said

clause, "and shall not discriminate in their rates and charges between such connecting lines." That is to say, as Congress was here dealing with the duties of carriers in regard to "connecting lines" and defining these duties, the language used shows that in order to bring the condemnation of the statute upon "the rates and charges" made by one carrier as between connecting lines, it is just as necessary that such rates and charges shall be *unreasonable, improper* and *unjust* as it is that to impose the duty of furnishing "equal facilities" between connecting lines for the interchange of traffic it must be necessary that such equal facilities shall be "reasonable and proper." In other words, if it is "reasonable and proper" that a carrier should make a *discrimination* in its "rates and charges" between connecting lines, then it may do so, and it is not a violation of the statute. The language of the first subdivision of section 3 is strongly persuasive to show that this is the true construction of the second subdivision of section 3.

One point in this case that I confess has given me much difficulty is the fact that while this arrangement for through routing and through billing existed between the New York & New England Railroad Company and the New York & Northern Railroad Company for through routing and through billing freight to and from Pier 45, New York City, the New York & New England Railroad Company did not then have a line of its own to New York City, and was obliged in this manner to make use of some such arrangement as this with the New York & Northern Railroad Company. Then as now the Housatonic Railroad Company was a connecting line with the New York & New England Railroad Company at Hawleyville, a distance of 16 miles from Brewsters, and the Housatonic Railroad Company had a line reaching to Wilson's Point. The Housatonic Railroad Company then had no line reaching to New York. Under these circumstances the New York & New England Railroad Company and the Housatonic Railroad Company, each desiring to get a line to New York City, combined together in establishing such a line, by getting up the New England Terminal Company to run a line of boats from Wilson's Point to New York,

expended large sums of money for this purpose and incurred large liabilities, and in this way did establish a line of their own to New York City, by way of the Housatonic Railroad from Hawleyville to Wilson's Point, and the New England Terminal Company from Wilson's Point to Pier 45, New York City.

After that was done the New York & New England Railroad Company was no longer dependent upon the New York & Northern Railroad Company for a line from Brewsters to New York City, and then the New York & New England Railroad Company, having a line of its own to New York in conjunction with the Housatonic Railroad Company, by way of Wilson's Point, declined to further do through routing and through billing business with the New York & Northern Railroad Company from Brewsters to New York.

Now, the second subdivision of section three of the Act to regulate commerce forbids a carrier from discriminating against "a connecting line" and in favor of another "connecting line," but it does not require a carrier engaged in interstate commerce business to "discriminate" *against itself*, by taking its business, where it has a line of its own to a given destination, and dividing that business or furnishing facilities for that business to another line that is competitive with it leading to the same destination from a point on its line. Suppose that, instead of entering into this arrangement with the Housatonic Railroad Company for making a through line to New York by way of Wilson's Point, the New York & New England Railroad Company should have established a line of its own to New York City, could it be contended that it was then still compelled to do a through business with the New York & Northern Railroad Company from Brewsters to New York, giving to it freight which the New York & New England Railroad Company could just as well carry over its own line to New York? Does it alter the case that the New York & New England Railroad Company, instead of building an extension of its line to New York without assistance, entered into an arrangement with the Housa-

tonic Railroad Company by which the same thing was done in effect? It is true that the line of the Housatonic Railroad Company from Hawleyville to Wilson's Point does not belong to the New York & New England Railroad Company, but it is operated under this arrangement just as though it did belong to it. It is equally true that in a technical sense the Housatonic Railroad Company is in some respects a connecting line of the New York & New England Railroad Company at Hawleyville, in the language of the statute. If the case stopped here, it seems to me that it would be a very narrow view of it to say that under such circumstances as these, the Housatonic Railroad Company should be treated as one of "the connecting lines" mentioned in subdivision two of section three of the Act to regulate commerce.

As, however, the New York & New England Railroad Company still continues the business of through routing and through billing of freight over the New York & Northern Railroad from Brewsters to High Bridge, a point virtually at the boundary of the city of New York, thereby recognizing the justice, propriety and utility of such an arrangement as that, and yet holding back the benefit of such facilities from that company for a distance of only nine miles from High Bridge to Pier 45, New York City, it appears to me that the position it holds in this matter is one that cannot be sustained, and falls within the condemnation of the statute. It is reasonably safe to assume upon the facts in this case that freight thus brought from Brewsters to High Bridge is destined to New York; and that freight taken from High Bridge to be carried to Brewsters, and beyond, under these arrangements, originates at New York. Then, upon all these facts, why cut off these arrangements at High Bridge? Why not let them reach New York? There seems to be nothing about the case that warrants action that is merely spiteful on the part of the New York & New England Railroad Company.

Therefore, as I stated at the outset, considering all the difficulties I have named, and upon the facts stated, I concur in the conclusion reached in this case, for the reason that I

believe it is "reasonable" and "proper" that the New York & New England Railroad Company should use its facilities already established and existing for the interchange of freight with the New York & Northern Railroad Company at Brewsters destined to and from Pier 45, New York City, as it is to and from Brewsters to High Bridge.

FREDERICK P. BEAVER AND WILLIAM D. CHAMBERLIN, DOING BUSINESS UNDER THE FIRM NAME OF BEAVER & COMPANY *v.* THE PITTSBURGH, CINCINNATI & ST. LOUIS RAILWAY COMPANY, THE CINCINNATI, HAMILTON & DAYTON RAILROAD COMPANY, THE NEW YORK, LAKE ERIE & WESTERN RAILROAD COMPANY, THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY, THE DAYTON, FORT WAYNE & CHICAGO RAILWAY COMPANY, THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY, THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, THE PENNSYLVANIA RAILROAD COMPANY, THE BALTIMORE & OHIO RAILROAD COMPANY, THE WABASH RAILROAD COMPANY, THE CHICAGO, ST. PAUL & KANSAS CITY RAILWAY COMPANY, THE ATCHISON, TOPEKA & SANTA FE RAILROAD COMPANY, THE MISSOURI PACIFIC RAILWAY COMPANY, THE CHICAGO, BURLINGTON & QUNICY RAILROAD COMPANY, THE HANNIBAL & ST. JOSEPH RAILROAD COMPANY, THE UNION PACIFIC RAILWAY COMPANY AND THE CHICAGO & NORTH-WESTERN RAILWAY COMPANY.

Complaint filed October 18, 1890.—Answers filed November 10, 1890, to January 6, 1891.—Heard February 20, 21, 1891.—Decided May 16, 1891.

1 Where two kinds of soap are made use of for the same purposes, and are advertised and held out to the world as suited for like purposes, and are substantially equal in value, they should both for purposes of transportation and rating be placed in the same classification.

2. The soaps known as the Ivory Soap and the Grand Pa's Wonder Soap fall within this rule. Both are represented as suitable for laundry and also for toilet purposes, and both are used for those purposes. It would therefore be unjust discrimination to place one of them in a classification as toilet soap and the other in a much lower classification as laundry soap.

William A. Day and *William P. Montague*, for complainants.

J. T. Brooks, for P., C. & St. L. Ry. Co.

Ramsey, Maxwell & Ramsey, for C., H. & D. R. R. Co.

James A. Buchanan, for N. Y., L. E. & W. R. R. Co.

Harmon, Colston, Goldsmith & Hoadley, for C., C., C. & St. L. Ry. Co.

R. D. Marshall, for D., Ft. W. & C. Ry. Co.

George C. Greene, for L. S. & M. S. Ry. Co.

Frank Loomis, for N. Y. C. & H. R. R. R. Co.

James A. Logan, for Penn. R. R. Co.

J. K. Cowen, for B. & O. R. R. Co.

W. H. Blodgett, for Wab. R. R. Co.

Lusk & Bunn, for C., St. P. & K. C. Ry. Co.

Britton & Gray, for A., T. & S. F. R. R. Co.

John S. Blair, for Mo. Pac. Ry. Co.

Shellabarger & Wilson, for Union Pac. Ry. Co.

J. W. Blythe, for C., B. & Q. R. R. Co. and H. & St. J. R. R Co.

W. C. Goudy, for C. & N. W. Ry. Co.

REPORT AND OPINION OF THE COMMISSION.

COOLEY, *Chairman:*

The petition states.

1. That complainants are manufacturers of soap at Dayton, Ohio, and that they have been, and desire to continue to be, shippers of soap as interstate commerce over the railway lines of respondents.

2. That respondents are common carriers subject to the provisions of the Act to regulate commerce.

3. That soaps transported over the several lines of respondents are classified either as "common or laundry" soap or as "fancy or toilet" soap. That no exact line of distinction between the "laundry" and "toilet" soaps has been adopted; and in fact some soaps principally used for toilet purposes are classified as "laundry" soaps, while others of similar nature and value, competitive with the former in the uses to which they are put, are classified as "toilet" soaps, and are charged rates which are fatal to their success in competition. Laundry soaps, L. C. L., are rated 4th class, and toilet soaps, L. C. L., are rated 2d class—second-class rates being very much higher than fourth class.

4. That petitioners' soap known as "Grand Pa's Wonder Soap" is adapted to general use both for laundry and toilet purposes, and is so advertised and sold by petitioners; yet said soap is classified by respondents as a "fancy soap," and second-class rates imposed on the transportation thereof in less than carload lots. Six kinds of soap are specified which are classified as "common" soap, all of which are said to be competitive with petitioners' above mentioned soap; three of which kinds are worth more per pound than complainants' soap, while the other three are worth but little less than complainants' soap. The following schedules show the kinds of soap, the value thereof and other particulars, carried in less than carload lots at fourth class:

Brand.	Number bars in box.	Gross weight.	Weight per bar.	Price per box.	Price per bar.	Value per lb.
Dobbins' Electric.....	60	46	8½ oz.	$4.80	8 c.	15 c.
Ivory (laundry size).....	100	75	10 oz.	6.25	6¼ c.	10 c.
Ivory (toilet size).....	100	46	6 oz.	3.75	3¾ c.	10 c.
Frank Siddal's	36	28	10½ oz.	2.50	6⅞ c.	9 3-10c.
White Cloud.....	100	75	10 oz.	5.40	5 4-10c.	8 6-20c.
White Cloud, small size	100	46	6 oz.	3.15	3 1-10c.	8 4-10c.

The following is the corresponding description and price of petitioners' soap, charged second-class rates:

Number bars in box.	Gross weight.	Weight per bar.	Price per box.	Price per bar.	Value per pound.
100	75	9½ oz.	$5.90	5 9-10c.	9 9-10c.

That the wrappers on petitioners' soap, and on Proctor & Gamble's Ivory soap, which competes with petitioners', both indicate the adaptation of the soap to both laundry and toilet use, and neither designate the soap as toilet soap. The Ivory soap, however, is put up in packages of different sizes, marked "Laundry" size and "Toilet" size respectively.

That in the statements and declarations for trade-mark, the Ivory soap is described as "a superior article of our own manufacture, put up in cakes for toilet, laundry and general use;" and petitioners' "Grand Pa" soap is described as "toilet and laundry soap."

That both petitioners' soap and the Ivory soap are extensively used for both laundry and toilet purposes, and it is alleged on belief that the Ivory is used more extensively for toilet than for laundry.

5. That prior to May, 1889, petitioners' soap was rated as fourth class, but during that month it was placed in second class, and since that time petitioners have had to pay second-class rates on many shipments. Petitioners recognize the value of the article as furnishing a proper basis of classification, and allege that their soap on account of its nature and cheapness should be placed with "common" soaps in fourth class. They allege that there is nothing in the mode of packing, marking and shipping their soap, calculated to mislead respondents or the public as to the nature and value thereof; that the attention of the freight agents of the respondents was called to the injustice of the existing classification, and that many of them, as well as other railway officials, competent to judge of such matters, thought petitioners' soap should have a fourth-class rate; that the original change of petitioners' soap from fourth to second class was made by inadvertence, yet that respondents refuse to restore the former classification, and continue to charge second-class rates on their soaps.

6. Petitioners allege that respondents, by following the classifications as aforesaid, charge and receive from petitioners a greater compensation for transportation services than they charge and receive from other persons, and espe-

cially from Proctor & Gamble, for like and contemporaneous services, in the transportation of a like kind of traffic under substantially similar circumstances and conditions, and are thus guilty of an unjust discrimination against petitioners.

They also allege that the higher rate charged petitioners on their soap effects an undue and unreasonable preference and advantage to their competitors in business, and subjects petitioners to undue and unreasonable prejudice and disadvantage. They claim the right to have refunded to them by respondents the amounts paid them respectively for transportation in excess of fourth-class rates.

7. Petitioners pray for an order commanding defendants to cease and desist from violating the Act to regulate commerce, to place petitioners' soap (in less than carloads) in fourth class; and recommending respondents respectively to refund to petitioners the amounts received for transportation of petitioners' soap, in excess of what they would have received had said soap been placed in fourth instead of second class; and they finally pray for general relief.

The answers filed generally admit that petitioners are manufacturers and shippers of soap at Dayton, and that respondents are common carriers subject to the provisions of the Act to regulate commerce.

They admit that soaps are classified as "common or laundry soap" and as "fancy or toilet soap," the former being in fourth class, the latter in second class. Some of the answers state that "castile, toilet and fancy soaps" are rated second class, and soaps "not otherwise specified," fourth class.

All the answers admit that the "Grand Pa's soap" of the petitioners is rated as a "toilet" or "fancy" soap, and is in the second class.

The answers generally deny the allegation that some soaps which are principally used for toilet purposes are classified as "laundry" soaps, while others of similar nature and value, and competitive in their uses, are classified as "toilet" soaps.

As to the Ivory soap and the other soaps classified in fourth class, the answers generally allege that they either are or are held out by the advertisements of the manufacturers

to be, chiefly adapted to laundry purposes. The "Grand Pa's soap," it is alleged, is held out by the marks and advertisements and statements on the packages containing it, to be principally a toilet soap. In some of the answers the marks and statements on the packages are described in full, as follows:

"Grand Pa's Wonder Soap will make the skin soft, will keep the skin soft, will cure chapped hands, will remove dandruff, will keep the hair from falling out, will remove tar or grease from silk or woolen fabrics." And upon another side of said paper box is the following: "The best soap made for machinists, mechanics, engineers, foundrymen, miners, coal-handlers, printers, painters, farmers, &c., &c." Defendant says none of such named classes of persons are engaged in the laundry business so far as it knows. Defendant says it is true that on another side of said paper box are the following statements: "A vegetable oil soap. Lathers freely in the hardest water; unequalled for the laundry; specially fine for woolen goods."

The statements of the manufacturer as to the character and uses of the "Grand Pa's" soap are relied on as justifying the carriers in placing it in the second class as a toilet soap. In most of the answers it is denied that "Grand Pa's soap" was prior to May 1, 1889, uniformly carried as fourth class by the railroad companies. It is admitted that for a while some of the initial carriers leading out of Dayton erroneously carried it as fourth class, but upon discovery of the error the lower rate was discontinued.

None of the answers admit the statements of the petition as to the values of Grand Pa's soap, and of Ivory and the other soaps named.

The general defense of all the respondents is that the soaps rated as "common or laundry soaps" are in fact such, and that "Grand Pa's soap," rated as a toilet soap, is in fact such, or at least that the respondents have a right, from the statements and advertisements of the petitioners, to presume it to be such, for the purpose of classification.

Upon the issues thus presented a large amount of evidence was taken, and the Commission finds therefrom that the important facts bearing upon the controversy are as follows:

The petitioners, since the latter part of the year 1885, have been engaged in the manufacture of soap at Dayton, Ohio. As they allege through their advertisements, billheads, etc., they hold themselves out to the public as being manufacturers of toilet and laundry soaps. They manufacture and sell some fifteen or twenty different brands of soap, some of which are distinctively for toilet purposes. "Grand Pa's Wonder Soap," the article whose proper classification is the subject of controversy, is the cheapest and commonest article of soap they make. Of that brand they have been making and selling something like 2,000,000 pounds per year, which is very much more than the amount sold of any other brand manufactured by them, or perhaps of all combined. The "Grand Pa's Wonder Soap" is made by them for laundry and rough toilet purposes, and is intended, to use their own expression, as a general purpose soap. The ingredients used in making it are about the same as those of petitioners in the manufacture of some of their distinctively toilet soaps, but the method of manufacturing it is different. The distinctively toilet soaps have a market value of about 16¾ cents per pound, while the "Grand Pa's Wonder Soap" is worth from 9 to 10 cents. The petitioners do not retail their goods, but sell only to the trade. The evidence clearly shows that the "Grand Pa's Wonder Soap" is used, not for laundry purposes exclusively, but for rough toilet purposes as well; but to what extent for the two purposes respectively it is impossible from the evidence to tell, and probably it would be impossible to show. Mr. Gill, Chairman of the Official Classification Committee of the Trunk Line Association, gave evidence of investigation by himself which satisfied him that this brand of soap was very little used for laundry purposes, and there is no reason to think that the respondents were actuated by any purpose to deal unfairly with the petitioners in classifying it as it was classified. Nevertheless the preponderance of evidence is clearly in favor of the claim of the

petitioners that the soap is well suited for laundry purposes, and that it is largely used therefor. In putting it up for market it is not wrapped in soft, flexible paper, as it is common to wrap toilet soaps, but each cake is put in a box just large enough to hold it conveniently, and which is made of stiff, coarse, strong paper, without fine work in the inscriptions or figures thereon to attract the eye. Upon this box on one end and on one side appears the name of the soap, "Grand Pa's Wonder," and on the other end is simply the word "durable." On the other three sides appear the following:

First side: "A vegetable oil soap. Lathers freely in the hardest water. Unequalled for the laundry; especially fine for woolen goods. Beaver & Co., Dayton, O."

Second side: "Grand Pa's Wonder Soap will make the skin soft; will keep the skin soft; will cure chapped hands; will remove dandruff; will keep the hair from falling out; will remove tar or grease from silk or woolen fabrics."

Third side: "The best soap made for machinists, mechanics, engineers, firemen, foundrymen, miners, coal handlers, printers, painters, farmers, etc., etc."

One hundred cakes thus put up in small paper boxes are then packed for shipment in a wooden box 20 inches long by 14 inches wide and 10 inches deep. On each end of each wooden box is simply the label, "Grand Pa's Wonder Soap." It is in these wooden boxes that the soap is delivered to the carriers for shipment.

The petitioners gave evidence to show that the several other varieties of soap specified in the petition, and which are made by other manufacturers, are used for the same general purpose as the "Grand Pa's Wonder Soap." The evidence, however, was in the main confined to showing that this was the case with the soap known as the Ivory soap, and that it is the Ivory soap which comes more particularly in competition with the "Grand Pa's Wonder Soap" in the markets of the country. The Ivory soap is advertised as admirable both for laundry and toilet purposes. It is put up for market in the form of a large sized cake, and also of a smaller sized

cake, and the latter is designated in the advertisements as the toilet size. The evidence tends to show that the composition of each of these is identical. The Ivory soap is very largely advertised in some of the leading publications of the country as a distinctively admirable toilet soap. It is largely used both for laundry and for toilet purposes, though in what proportions for the one and for the other purpose cannot be determined. The "Grand Pa's Soap" sells for a little less per pound in the market than the Ivory, and considerably less than the Dobbin soap, which is mentioned in the petition. The commonest kinds of laundry soaps are worth much less than any of those which have been mentioned. Speaking generally, it may be said that toilet soaps are worth two or three times as much per pound as the common soaps manufactured especially for laundry purposes.

From the time petitioners began the manufacture of their soaps until May, 1889, their Grand Pa's Wonder brand was carried at fourth-class rates by all railroads. In May, 1889, the western roads, and in October of the same year the roads using the Official Classification, raised it to second class. For a time during the year 1890 the roads centering in Dayton put it back in the fourth class, but at the direction of the Western and Official Classification Committees they soon restored it to second class. All the other soaps mentioned by petitioners as above are rated in each of these classifications fourth class, and the rates thereon for transportation are very much lower than the second-class rates which the petitioners are required to pay. In some cases they are double. The trade of petitioners in many sections of the country has been very seriously affected by the change in classifications and they have been forced either to reduce their prices at some points or submit to a large falling off in their sales. The manufacturers of the Ivory soap, who are their principal competitors in the market, have been the chief gainers where petitioners have lost.

A clear preponderance of the evidence tends fairly to show, as we think, and we find the fact to be, that the petitioners and the manufacturers of the Ivory soap make substantially the same claims as to the purposes to which their

manufactures are suited; that both the "Grand Pa's Wonder Soap" and the Ivory soap are used largely for both laundry and toilet purposes, and that there is nothing in the claims made on behalf of the one, or in the use to which it is put by consumers, which entitles it to any more favorable classification than should be given the other. They ought both to be placed in the same class, and the same rates should be paid upon them. What the class should be we have no occasion here to say. The question as it is presented to us upon the evidence is one rather of discrimination than of rates. The petitioners claim to be in a measure driven out of the market by the advantage which is given to their chief competitor in the classification, and to be deprived of profits on sales where they are now unable to make them. The claim seems to us established. The discrimination, though as already stated we have no reason to believe that a classification not perfectly fair was intended, is, in fact, unjust, and ought to be remedied. The respondents should revise their classification in the matter of soaps, and should put the "Grand Pa's Wonder Soap" in the same classification with the Ivory soap. They belong together not only because they are intended to supply the same wants, and to be used for the same purposes, but also because in commercial value they are not essentially different, the price of the "Grand Pa's Wonder Soap" being rather less than the price put upon the Ivory soap.

This case differs essentially from the case of The Andrews Soap Co. *v.* The Pittsburgh, Cincinnati & St. Louis Railway Company and others, decided in May, 1890. The complainant in that case manufactured and put upon the market a kind of soap known in the trade as American Castile Soap, which was a soap intended and exclusively used and represented as suitable for toilet purposes. It was very plain, therefore, that under the classification then and now existing it belonged in the second class, and could be placed nowhere else.

The order of the Commission will be that the several

respondents through their Classification Committee or otherwise, revise their classification in respect to the article of soap, and that in doing so they put the "Grand Pa's Wonder Soap" manufactured by the petitioners in the same class with the Ivory soap with which it competes for the purposes for which the soaps respectively are manufactured and sold.

THE JAMES & MAYER BUGGY COMPANY *v.* THE CINCINNATI, NEW ORLEANS & TEXAS PACIFIC RAILWAY COMPANY, THE WESTERN & ATLANTIC RAILROAD COMPANY AND THE GEORGIA RAILROAD COMPANY.

Complaint filed October 18, 1889.—Answers filed November 8-29, 1889.—Depositions on behalf of defendants filed June 9, 1890.—Decided June 29, 1891.

1. SAME RATE FOR LONGER AND SHORTER DISTANCES. Ordinarily longer distances warrant higher charges, but carriers may lawfully accept the same aggregate, though less profitable, rates for longer distances, provided such carriers do not "subject any particular person, company, firm, corporation or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage."

2. GREATER CHARGE FOR SHORTER DISTANCES. The circumstances and conditions which make a greater charge for a shorter distance lawful relate to the nature and character of the transportation service rendered by the carrier over the same line to the longer and shorter distance points.

3. SAME. Water competition to justify the greater charge for the shorter distance must be competition in transportation to the longer-distance point and as to freight which, if not carried over the line on which it is located, would reach such destination by water transportation.

4. SAME. Goods shipped from Cincinnati, Ohio, to points in the State of Georgia are interstate traffic, and all the roads forming a part of the line over which such goods are carried to their destination are engaged in interstate commerce and are subject to the Act to regulate commerce. Where two or more roads forming a continuous connecting line between points in different States bill and carry interstate traffic through to certain stations on the last road forming such line, neither the roads together nor any one of them can evade the obligations of the fourth section of said Act by declaring that as to such traffic destined to such station on such terminal road it is a local carrier.

Howard K. James and *Louis G. Mayer*, for complainant.
Edw. Colston, for C., N. O. & T. P. R. Co.
Joseph B. Cumming, for Georgia R. R. Co.
Joseph M. Brown, for W. & A. R. R. Co.

REPORT AND OPINION OF THE COMMISSION.

MORRISON *Commissioner:*

The James & Mayer Buggy Company, buggy and carriage manufacturers of Cincinnati, Ohio, complains that the defendants are common carriers "under a common control, management or arrangement for continuous carriage or shipment," and charge the same rate, $1.01 per 100 pounds, for transporting vehicles shipped by complainants from Cincinnati, whether shipped to Atlanta, Georgia, a distance of about 474 miles, or to Augusta, Georgia, a distance of 645 miles, and charge 30 cents per hundred pounds more on such vehicles shipped to Social Circle, Georgia, a distance of 526 miles, than when shipped either to Atlanta or Augusta. That said shipments are made at first-class rates over the same lines; that the complainant ought not to be compelled to pay the same freight charge to Atlanta as to Augusta, 171 miles the greater distance, and ought not to be compelled to pay 30 cents per 100 pounds more to Social Circle than to Augusta, more distant by 120 miles, and that the defendants in charging more to Social Circle, the shorter distance over the same line in the same direction, than they charge to Augusta, are violating the fourth section of the Act to regulate commerce.

The complainants ask that their complaint and charges may be investigated; that the defendants may be required and ordered to cease and desist from said alleged violation of the Act to regulate commerce, and that the Commission will make such further order as may be deemed necessary in the premises.

The Cincinnati, New Orleans & Texas Pacific Railway Company, answering, admits that complainant manufactures buggies in Cincinnati, Ohio, and that defendants are common carriers wholly by railroad between Cincinnati and Atlanta and Cincinnati and Augusta, but denies that defendants are under common control, management or arrangement for continuous carriage and avers that the connection of this defendant with such carriage or shipment begins at Cincin-

nati and ends at Chattanooga, Tennessee; that of the Western & Atlantic Railroad Company begins at Chattanooga and ends at Atlanta, and that of the Georgia Railroad begins at Atlanta and ends at Augusta. It admits that the rates and distances from Cincinnati to Atlanta, Augusta and Social Circle, respectively, are correctly stated in the complaint, but denies that with the others this defendant makes a through rate to Social Circle, and says such rate is made by adding the local rate of said Georgia Railroad from Atlanta to Social Circle to the rate from Cincinnati to Atlanta. It avers that of the rate of $1.01 to Atlanta its proportion for the distance over its line to Chattanooga is 71 6-10 cents, and that of the Western & Atlantic for the distance over its line from Chattanooga to Atlanta is 29 4-10 cents; that its proportion of the rate to Augusta for the distance over its line to Chattanooga is 52 6-10; that of the Western & Atlantic for the distance over its line from Chattanooga to Atlanta is 21 6-10, and that of the Georgia Railroad for the distance over its line from Atlanta to Augusta, 26 6-10 cents; that the rate to Atlanta is no more than reasonable for the service rendered; and "that the rate to Augusta is the same as to Atlanta for the reason that such (Augusta) rate is governed by the rate from Baltimore and New York to Augusta and made on a lower basis than rates to Atlanta, on account of water competition *via* Charleston, S. C., and Savannah, Ga., which operates to lower such rate to Augusta. The relative distance hauled and the proportionate amount of services performed by this defendant in carrying said goods to Augusta being less than the distance and service to Atlanta, the compensation of this defendant is relatively less."

The answer of the Western & Atlantic Railroad Company denies that there is anything in the Interstate Commerce Law which requires the making of a less rate from Cincinnati to Atlanta than from Cincinnati to Augusta, and as to the rate from Cincinnati to Social Circle says, "that Social Circle is a local point on the Georgia Railroad, and that company has not furnished us with any basis for working business to its local points other than taking the rate as in this instance

from Cincinnati to Atlanta and adding their local. This company on this business has charged no more than if the freight had stopped at Atlanta, or than it would receive going to any point within the same radius from Atlanta as that in which Social Circle is located. Further, as the rates to Augusta are brought down by water competition, we do not consider therefore that we have violated the Interstate Commerce Law. The rate within itself is not unreasonable, and we cannot see that there is any discrimination against the parties at Social Circle, and this company furthermore is unable to control the local rates of any of its connections."

The Georgia Railroad Company, answering, admits that the defendants are common carriers under a common arrangement for continuous carriage or shipment by rail from Cincinnati, Ohio, to Atlanta, Milledgeville, Augusta, Athens, and to Washington, Georgia, on its line, and avers that the proper through rates from Cincinnati to Atlanta and to Augusta over defendants' lines on buggies and carriages in less than carloads was and is $1.07, and not $1.01, as improperly quoted and stated. It admits that "as a matter of fact the shipment from Cincinnati to Social Circle by the petitioner was made on a through bill of lading," but denies that it quotes through rates, or is, with the other defendants, a through carrier from Cincinnati to Social Circle, or that it has with the other defendants any agreement or arrangement for a through bill of lading or through and continuous carriage from Cincinnati to Social Circle or any other point on the Georgia Railroad other than above specified, and avers that when freight is billed through to Social Circle the rate is made by adding to the rate from Cincinnati to Atlanta this defendant's local rate from Atlanta to Social Circle.

Further answering, the Georgia Railroad Company avers that the rates from Cincinnati to Social Circle and Augusta respectively are not "obnoxious" to or in violation of the fourth section or other provision of the Interstate Commerce Act. This averment it supports by further averment, statement and explanation, which is copied and appears hereafter in the conclusions of the Commission.

In addition to the facts stated by the complainant and admitted in the answers of defendants the following facts are ascertained on investigation:

The Cincinnati, New Orleans & Texas Pacific Railway Company has a line extending from Cincinnati, Ohio, to Chattanooga, Tennessee, a distance of 336 miles. From Chattanooga the Western & Atlantic has a line extending to Atlanta, Georgia, a distance of 138 miles. The main line of the Georgia Railroad extends from Atlanta to Augusta, Georgia, a distance of 171 miles. Social Circle is a station on the main line of the Georgia Railroad, 52 miles east of Atlanta, and 119 miles west of Augusta.

The Cincinnati, New Orleans & Texas Pacific Railway carries freight over its own line to Chattanooga, and, in connection with the Western & Atlantic Railroad Company, is a common carrier on through bills at through rates from Cincinnati to Atlanta.

The last above-named companies, in connection with the Georgia Railroad Company, are common and continuous carriers on through bills from Cincinnati to Augusta, Social Circle and other points in Georgia on the lines of said Georgia Railroad.

The rate on first-class freight, which includes such vehicles as buggies and carriages, over the two roads first above named, from Cincinnati to Atlanta, in less than carloads, is $1.07 per hundred pounds, and is over the three defendant roads, from Cincinnati to Augusta, also $1.07 per hundred pounds. The defendant roads make through bills and continuous carriage of first-class and other freight at through rates from Cincinnati to Augusta, the southern terminus of the main line, and to the termini of the branch lines of the Georgia Railroad at lower rates than to Social Circle, a less distant station on the main line of said Georgia Railroad. To Athens, Milledgeville and Washington, stations on branch lines of said Georgia Railroad, and more distant from Cincinnati than Social Circle, the defendants charge $1.07 per hundred pounds, the same as to Atlanta and Augusta, while they charge $1.37 to Social Circle, or 30 cents per hundred pounds higher than to Augusta, the eastern terminus, and a

more distant station by 119 miles than Social Circle on the same line of said Georgia Railroad Company.

The established rate on first-class freight in less than carloads, "released," of the Cincinnati, New Orleans & Texas Pacific Railway Company from Cincinnati to Chattanooga is 76 cents per hundred pounds; of the Western & Atlantic from Chattanooga to Atlanta is 57 cents per hundred pounds; and of the Georgia Railroad, Atlanta to Social Circle, 30 cents, and Atlanta to Augusta, 64 cents per hundred pounds; making the sum of the local rates over said roads from Cincinnati $1.33 to Atlanta, $1.63 to Social Circle, and $1.97 to Augusta.

The rates complained of are alleged to be, from Cincinnati to Atlanta and to Augusta, $1.01, and to Social Circle, $1.31 per hundred pounds, and the Cincinnati, New Orleans & Texas Pacific, the initial or sending company, admits these rates to be as alleged by complainants. But this is an error, and the established rates were and are, to Atlanta and Augusta, $1.07, and to Social Circle, $1.37, which established rates were and are collected on shipments made by complainant.

The through rates from Cincinnati to Atlanta, Augusta, Washington and some other stations on the Georgia Railroad being less than the sum of the locals of the defendant roads, in making such through rates each of said roads accepts less than its local rates for the distances over its line. The proportion of the $1.07, the rate through from Cincinnati to Augusta received by the defendant companies, is, to the Cincinnati, New Orleans & Texas Pacific 55 7-10 cents; to the Western & Atlantic 22 9-10, and to the Georgia 28 4-10, which is in proportion to the distance over each road.

The division of the rate to Atlanta is also in proportion to distance—75 9-10 cents to the Cincinnati, New Orleans & Texas Pacific, and 31 1-10 to the Western & Atlantic.

The division of the rate to Social Circle is the same as to Atlanta over the lines of defendants last above named—75 9-10 and 31 1-10 cents—and to this the full local rate of 30 cents from Atlanta to Social Circle over the Georgia Railroad is added.

The rates in force both from Cincinnati and from Baltimore and other eastern cities to Atlanta, Augusta and other so-called "competitive" points are the rates established by the Southern Railway and Steamship Association, and the rates to such competitive points are the same by the all-rail and the part rail and part water, or coastwise routes. The rate on first-class freight, including buggies and carriages, in less than carloads from Baltimore to Augusta, a distance of 611 miles, is 89 cents per hundred pounds. From the more distant cities of Philadelphia, New York and Boston to Augusta the rate is 96 cents per hundred pounds. There is no proof as to shipments of buggies and carriages to Augusta from Baltimore or other eastern cities. In connection with carriers making the rate of 89 cents per hundred pounds of first-class freight to Augusta from Baltimore, the Georgia Railroad Company, one of the defendants, is a carrier from Baltimore, through Augusta, west to Social Circle, at the rate of $1.37, and through Augusta and Social Circle to Atlanta, at the through rate of $1.07 per hundred pounds, Atlanta being 52 miles more distant than Social Circle from Baltimore.

On the facts thus admitted and ascertained, the Buggy Company alleges that the same charge from Cincinnati to Atlanta as to Augusta, 117 miles more distant than Atlanta, and the 30 cents per hundred pounds greater charge to Social Circle, 119 miles less distant than to Augusta, are both charges complainant ought not to be compelled to pay, and that in making the higher charge to Social Circle than to Augusta the defendants violate the fourth section of the Act to regulate commerce.

The answer of the Cincinnati, New Orleans & Texas Pacific Company states that the rate from Cincinnati to Atlanta is $1.01, and avers that to be a reasonable charge for the service rendered in the transportation of first-class freight in less than carloads.

The Western & Atlantic Company avers that the charge being made to Atlanta is reasonable, without stating the amount of such charge. The only testimony offered or heard

as to the reasonableness of the rate to Atlanta in question was that of the vice-president of the Cincinnati, New Orleans & Texas Pacific Company, whose deposition was taken at the instance of said company.

The witness testified that he had been in the railroad service about twenty-six years, and had much to do with rates during all that time, and that he considered $1.01 per hundred pounds in less than carloads a reasonable rate on first-class freight from Cincinnati, Ohio, to Atlanta, Georgia.

This statement, or estimate, of the rate from Cincinnati to Atlanta, we believe, is fully as high as it may reasonably be, if not higher than it should be; but, without more thorough investigation than it is now practicable to make, we do not feel justified in determining upon a more moderate rate than $1 per hundred pounds of first-class freight in less than carloads.

The rate on this freight from Cincinnati to Birmingham, Alabama, is 89 cents, as compared with $1.07 to Atlanta, the distance being substantially the same. There is apparently nothing in the nature and character of the service to justify such difference, or, in fact, to warrant any substantial variance in the Atlanta and Birmingham rates from Cincinnati. The greater distance would ordinarily warrant higher charges to Augusta than would be justifiable to Atlanta on Cincinnati freight. Still, if the carriers, to secure traffic to Augusta, accept Atlanta rates, which afford less profit in proportion to distance, there can be no legal objection unless by accepting the same rates to Augusta said defendants may "subject any particular person, company, firm, corporation or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage." It is not claimed, nor does it appear, that any such prejudice or disadvantage results from the acceptance of rates by the defendants which are somewhat lower than they might legally exact on Augusta shipments from Cincinnati.

By the Act to regulate commerce distance is made a controlling consideration in determining the reasonableness of rates, and especially in determining relative transportation

charges to various stations reached over the same line. This provision of the statute, if not qualified by exceptional or dissimilar circumstances and conditions as provided in the statute, forbids higher aggregate charges on Cincinnati shipments to Social Circle than to Augusta.

This rule is recognized and established by the fourth section of the Act to regulate commerce, which declares:

"It shall be unlawful for any common carrier subject to the provisions of this Act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line in the same direction, the shorter being included within the longer distance: but this shall not be construed as authorizing any common carrier within the terms of this Act to charge and receive as great compensation for a shorter as for a longer distance."

The aggregate compensation of the defendants for the continuous carriage of first-class freight billed through from Cincinnati to Social Circle is higher than on like freight billed and carried in the same manner by the defendants from Cincinnati to Augusta. The distance from Cincinnati to Social Circle is shorter than to Augusta, the carriage is over the same line in the same direction, and the shorter distance is included in the longer.

In defense of the rate from Cincinnati to Atlanta, which is the same as to Augusta, the Cincinnati, New Orleans & Texas Pacific Railway Company answers that water competition *via* Charleston and Savannah operates to lower Augusta rates; and in defense of the rate to Social Circle, which is greater than the rate to Augusta, the Western & Atlantic Railroad Company answers that the rate to Augusta is brought down by water competition. In defense of the rates from Cincinnati both to Social Circle and to Augusta on its line, the Georgia Railroad Company answers:

"Respondent says that the rate from Atlanta to Social Circle is just and reasonable; also, that the rate from Cincinnati to Social Circle is just and reasonable, and not obnoxious to any provision of the Interstate Commerce Act by reason of not being just and reasonable.

"Respondent further says that the through rate from Cincinnati to

Augusta, though the same as from Cincinnati to Atlanta, is not unlawful under section four of the Interstate Commerce Act, because said rates are charged not under substantially similar circumstances and conditions.

"In explanation of this statement, respondent says that at Baltimore, Maryland, and other eastern cities, large manufactories of buggies, carriages, etc., exist, and that the product of these factories is transported from said places to Augusta at such rates that, if this respondent and its connections between Atlanta and Cincinnati charge a rate higher than one dollar and seven cents per hundred pounds from Cincinnati to Augusta, no freight of this character would come over the Georgia Railroad, for the product of the eastern factories would be delivered in Augusta at a rate which would exclude the Cincinnati product from the Augusta market."

The rates from Atlantic coast cities to Augusta are the same by water and rail as by the all-rail lines or routes, and are established by such lines competing with each other for business between Augusta and such Atlantic coast cities. The Georgia Railroad Company does not in its answer, or otherwise, mention or refer to water competition, or make any distinction between rates by water and by rail to Augusta from said Atlantic coast cities, and the existing rates by rail as well as by water are the rates from eastern cities to Augusta, which as defendants claim make a lower rate to Augusta than to Social Circle lawful. The several answers of the defendants taken together mean that the transportation for the shorter distance to Social Circle and the longer distance to Augusta is not "under substantially similar circumstances and conditions," and that the greater charge for the shorter distance is therefore lawful; that this alleged dissimilarity of circumstances and conditions results from the existence of large manufactories of buggies and carriages in Baltimore and other eastern cities between which cities and Augusta such transportation rates prevail that Cincinnati vehicles would be excluded from the Augusta market which would be supplied by the product of such eastern factories if the defendants charged a rate to Augusta as high as the reasonable rate to Social Circle; and that the rates between eastern cities and Augusta, which are the same by rail and water, are made lower by reason of the existence of coastwise or water transportation routes between eastern cities and Augusta through Charleston and Savannah.

There is no contention that the alleged difference in cir-

charges to various stations reached over the same line. This provision of the statute, if not qualified by exceptional or dissimilar circumstances and conditions as provided in the statute, forbids higher aggregate charges on Cincinnati shipments to Social Circle than to Augusta.

This rule is recognized and established by the fourth section of the Act to regulate commerce, which declares:

"It shall be unlawful for any common carrier subject to the provisions of this Act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier within the terms of this Act to charge and receive as great compensation for a shorter as for a longer distance."

The aggregate compensation of the defendants for the continuous carriage of first-class freight billed through from Cincinnati to Social Circle is higher than on like freight billed and carried in the same manner by the defendants from Cincinnati to Augusta. The distance from Cincinnati to Social Circle is shorter than to Augusta, the carriage is over the same line in the same direction, and the shorter distance is included in the longer.

In defense of the rate from Cincinnati to Atlanta, which is the same as to Augusta, the Cincinnati, New Orleans & Texas Pacific Railway Company answers that water competition *via* Charleston and Savannah operates to lower Augusta rates; and in defense of the rate to Social Circle, which is greater than the rate to Augusta, the Western & Atlantic Railroad Company answers that the rate to Augusta is brought down by water competition. In defense of the rates from Cincinnati both to Social Circle and to Augusta on its line, the Georgia Railroad Company answers:

"Respondent says that the rate from Atlanta to Social Circle is just and reasonable; also, that the rate from Cincinnati to Social Circle is just and reasonable, and not obnoxious to any provision of the Interstate Commerce Act by reason of not being just and reasonable.

"Respondent further says that the through rate from Cincinnati to

Augusta, though the same as from Cincinnati to Atlanta, is not unlawful under section four of the Interstate Commerce Act, because said rates are charged not under substantially similar circumstances and conditions.

"In explanation of this statement, respondent says that at Baltimore, Maryland, and other eastern cities, large manufactories of buggies, carriages, etc., exist, and that the product of these factories is transported from said places to Augusta at such rates that, if this respondent and its connections between Atlanta and Cincinnati charge a rate higher than one dollar and seven cents per hundred pounds from Cincinnati to Augusta, no freight of this character would come over the Georgia Railroad, for the product of the eastern factories would be delivered in Augusta at a rate which would exclude the Cincinnati product from the Augusta market."

The rates from Atlantic coast cities to Augusta are the same by water and rail as by the all-rail lines or routes, and are established by such lines competing with each other for business between Augusta and such Atlantic coast cities. The Georgia Railroad Company does not in its answer, or otherwise, mention or refer to water competition, or make any distinction between rates by water and by rail to Augusta from said Atlantic coast cities, and the existing rates by rail as well as by water are the rates from eastern cities to Augusta, which as defendants claim make a lower rate to Augusta than to Social Circle lawful. The several answers of the defendants taken together mean that the transportation for the shorter distance to Social Circle and the longer distance to Augusta is not "under substantially similar circumstances and conditions," and that the greater charge for the shorter distance is therefore lawful; that this alleged dissimilarity of circumstances and conditions results from the existence of large manufactories of buggies and carriages in Baltimore and other eastern cities between which cities and Augusta such transportation rates prevail that Cincinnati vehicles would be excluded from the Augusta market which would be supplied by the product of such eastern factories if the defendants charged a rate to Augusta as high as the reasonable rate to Social Circle; and that the rates between eastern cities and Augusta, which are the same by rail and water, are made lower by reason of the existence of coastwise or water transportation routes between eastern cities and Augusta through Charleston and Savannah.

There is no contention that the alleged difference in cir-

cumstances and conditions has any relation to the cost of transportation of the freight for the shorter and longer distances from Cincinnati to Social Circle and Augusta, respectively, or that such alleged difference or dissimilarity has any reference to transportation by water or water competition between Cincinnati and Augusta, or that such freight might or could be taken by any water or part-water route from Cincinnati to Augusta unless a rate is maintained from Cincinnati to Augusta lower than a reasonable rate to Social Circle.

The defendants seek to bring themselves within the exceptional circumstances and conditions of the statute and to justify the lower rates to Augusta because of the competition between Cincinnati and eastern cities for the buggy and carriage trade of the Augusta market, in reaching which the eastern cities have the advantages of rail and water transportation, while Cincinnati products must go by rail. Independent of the rate to shorter-distance points on their line defendants insist they may lawfully make such lower rate to the longer-distance point as will prevent eastern manufacturers more advantageously located from taking the Augusta market from Cincinnati manufacturers. The right to make the lower charge for the longer distance is averred to be necessary to secure the transportation of carriages from Cincinnati, which, without the advantage of such lower charge, would come from the factories of eastern makers.

The rate from Cincinnati is $1.07. From Baltimore both by rail and water it is 89 cents, or 18 cents per hundred pounds in favor of Baltimore. The fact that Cincinnati makers ship their product to a market in which they are in the matter of transportation at such disadvantage in competition with their rivals shows that the question of competing in the Augusta carriage market involves and depends upon commercial and other conditions than such as affect freight charges.

If the contention of the defendants is justified by the statute, and they can avail themselves of its exceptional provision and charge more for the shorter distance for the purpose of equalizing commercial conditions and adjusting trade relations between the cities of Cincinnati and Baltimore in the

Augusta market, the same thing may be done to place Cincinnati carriage makers on an equal footing with those of Augusta in the Augusta market, or to relieve any city from any disadvantage in markets of other cities, or to deprive all cities or places of production of any advantage resulting from their location. Such an interpretation would make the fourth section of the Act practically inoperative, and with such a license in rate making carriers might give advantage to or build or destroy the carriage or other business of any city or locality.

The circumstances and conditions which would justify a lower rate from Cincinnati to Augusta than to Social Circle must have relation to the nature and character of the service rendered by the carrier in the transportation between Cincinnati and the places on the same line. The competition by water which would bring the transportation within the exception of the statute is competition in transportation to the longer-distance point and as to freight which if not carried to such longer-distance point by the defendant roads could reach such destination by water transportation.

The only witness in the case, an officer of one of the defendant companies, testified that the rates from eastern cities to Augusta are affected by its proximity to the seaboard, and that he thought Social Circle too remote from the seaboard to be affected by steamship competition. The Commission makes no formal finding of fact, based on this testimony, as to the points at which rates are affected by coastwise or water competion between eastern cities and such points on the lines of the defendants, or any one of them. But the belief of the witness that steamship competition, which operated to lower rates at Augusta, did not extend as far from the coast as Social Circle, is not in accordance or consistent with the action of the defendant the Georgia R. R. Co., and is contradicted by this company in the rates maintained to points on its line from Baltimore and other eastern cities. With eastern connections, this company is a carrier from Baltimore, through Augusta and Social Circle, to Atlanta, and at the same rate, $1.07, charged by it, the said Georgia R. R. Co., and other defendants from Cin-

cinnati, through Atlanta and Social Circle, to Augusta. While, with its connections east and west, respectively, the Georgia R. R. Co. makes the same charges from Baltimore through Augusta to Atlanta as from Cincinnati through Atlanta to Augusta, the said Georgia R. R. Co., with such connections, makes the same rate, $1.37, to Social Circle from both Cincinnati and Baltimore, thus making the greater charge for the shorter distance to Social Circle as well when it is nearer to the coast than Atlanta as when farther from the coast than Augusta. In the light of these practices of the defendants, the influence of steamship or water competition extends to and operates to lower the rates at Atlanta, more distant from the seaboard, but does not extend or have the like effect on the charges made to the intermediate and less favored shorter-distance place, Social Circle.

The defendants unite in presenting their alleged separate or independent relations to each other in the matter of transportation between Cincinnati and Social Circle as a further, if not their chief, reason upon which they justify and declare the higher charge for the shorter distance lawful under the fourth section and other provisions of the Act. It is averred in their several answers that they have no agreement or arrangement for through carriage, and that the rate on through bills to Social Circle is made by adding the local rate of the Georgia Railroad from Atlanta to Social Circle to the through rate of the other two defendants from Cincinnati to Atlanta, while the rate is made through on a lower basis in which all the defendants unite, each abating something from its local rate in making the through rate to Augusta. Upon this averment the defendants assume that they are not through and continuous carriers from Cincinnati to Social Circle, and that as to such transportation and rates to Social Circle the defendants are not within or subject to the fourth section or other provision of the Act to regulate commerce.

The billing and carrying through to Social Circle and to Augusta and other points on the Georgia Railroad is by the same companies and over the same lines, and the carriage and traffic is none the less interstate because the rates to some points may be reasonable, and to others excessive, or

because as between themselves the carriers make and apportion the rates to Social Circle and Augusta on different bases.

What might be the relation of the Georgia Railroad Company to interstate traffic, or to what extent, if at all, it would be subject to the provisions of the Act to regulate commerce were it operated as a state or local road and did not participate in interstate business, we need not now consider. But if said railroad company with the other defendants bill and carry such interstate traffic through to Social Circle and various other stations on the line of the Georgia Railroad Company, neither the defendants together, nor any one of them, can be permitted to deny that they are, or that any one of them is, as to such traffic and through carriage, engaged in interstate business, nor can they avoid the fourth section or other provision of the Act by declaring that as to such traffic destined to Social Circle, a station on its line, the Georgia Railroad Company is a local carrier and not subject with the other defendants to the provisions of said Act.

Goods shipped from Cincinnati, in the State of Ohio, destined to points on the Georgia Railroad in the State of Georgia, are interstate traffic, and all the roads forming a part of the line over which such goods are carried are engaged in interstate commerce.

The defendants will be required to cease and desist from making any greater charge in the aggregate on buggies, carriages and other freight of the first class carried in less than carloads from Cincinnati to Social Circle than they charge on such freight from Cincinnati to Augusta, and said defendants will cease and desist from making any charge for the transportation of such freight from Cincinnati to Atlanta in excess of $1 per hundred pounds. This order to be in force from and after the 20th day of July, 1891.

[PUBLIC—No. 72.]

An act to amend an act entited "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section twelve of an act entitled "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, be, and it is hereby amended so as to read as follows:

"SEC. 12. That the Commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created; and the Commission is hereby authorized and required to execute and enforce the provisions of this act; and, upon the request of the Commission, it shall be the duty of any district attorney of the United States to whom the Commission may apply to institute in the proper court and to prosecute under the direction of the Attorney-General of the United States all necessary proceedings for the enforcement of the provisions of this act and for the punishment of all violations thereof, and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States; and for the purposes of this act the Commission shall have power to require, by subpœna, the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements and documents relating to any matter under investigation.

"Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpœna, the Commission, or any party to a proceeding before the Commission, may

invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers and documents, under the provisions of this section.

"And any of the circuit courts of the United States within the jurisdiction of which such inquiry is carried on, may, in case of contumacy or refusal to obey a subpœna issued to any common carrier subject to the provisions of this act, or other person, issue an order requiring such common carrier or other person to appear before said Commission (and produce books and papers if so ordered) and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. The claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying; but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

"The testimony of any witness may be taken, at the instance of a party, in any proceeding or investigation depending before the Commission, by deposition, at any time after a cause or proceeding is at issue on petition and answer. The Commission may also order testimony to be taken by deposition in any proceeding or investigation pending before it, at any stage of such proceeding or investigation. Such depositions may be taken before any judge of any court of the United States, or any commissioner of a circuit, or any clerk of a district or circuit court, or any chancellor, justice, or judge of a supreme or superior court, mayor or chief magistrate of a city, judge of a county court, or court of common pleas of any of the United States, or any notary public, not being of counsel or attorney to either of the parties, nor interested in the event of the proceeding or investigation. Reasonable notice must first be given in writing by the party or his attorney proposing to take such deposition to the opposite party or his attorney of record, as either may be nearest, which notice shall state the name of the witness and the time and place of the taking of his deposition. Any person may be compelled to appear and depose, and to produce docu-

mentary evidence, in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission, as hereinbefore provided.

"Every person deposing as herein provided shall be cautioned and sworn (or affirm, if he so request) to testify the whole truth, and shall be carefully examined. His testimony shall be reduced to writing by the magistrate taking the deposition, or under his direction, and shall, after it has been reduced to writing, be subscribed by the deponent.

"If a witness whose testimony may be desired to be taken by deposition be in a foreign country, the deposition may be taken before an officer or person designated by the Commission, or agreed upon by the parties by stipulation in writing to be filed with the Commission. All depositions must be promptly filed with the Commission."

Witnesses whose depositions are taken pursuant to this act, and the magistrate or other officer taking the same, shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

Approved, February 10, 1891.

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The defendants unite in presenting their alleged separate or independent relations to each other in the matter of transportation between Cincinnati and Social Circle as a further, if not their chief, reason upon which they justify and declare the higher charge for the shorter distance lawful under the fourth section and other provisions of the Act. It is averred in their several answers that they have no agreement or arrangement for through carriage, and that the rate on through bills to Social Circle is made by adding the local rate of the Georgia Railroad from Atlanta to Social Circle to the through rate of the other two defendants from Cincinnati to Atlanta, while the rate is made through on a lower basis in which all the defendants unite, each abating something from its local rate in making the through rate to Augusta. Upon this averment the defendants assume that they are not through and continuous carriers from Cincinnati to Social Circle, and that as to such transportation and rates to Social Circle the defendants are not within or subject to the fourth section or other provision of the Act to regulate commerce.

The billing and carrying through to Social Circle and to Augusta and other points on the Georgia Railroad is by the same companies and over the same lines, and the carriage and traffic is none the less interstate because the rates to some points may be reasonable, and to others excessive, or

because as between themselves the carriers make and apportion the rates to Social Circle and Augusta on different bases.

What might be the relation of the Georgia Railroad Company to interstate traffic, or to what extent, if at all, it would be subject to the provisions of the Act to regulate commerce were it operated as a state or local road and did not participate in interstate business, we need not now consider. But if said railroad company with the other defendants bill and carry such interstate traffic through to Social Circle and various other stations on the line of the Georgia Railroad Company, neither the defendants together, nor any one of them, can be permitted to deny that they are, or that any one of them is, as to such traffic and through carriage, engaged in interstate business, nor can they avoid the fourth section or other provision of the Act by declaring that as to such traffic destined to Social Circle, a station on its line, the Georgia Railroad Company is a local carrier and not subject with the other defendants to the provisions of said Act.

Goods shipped from Cincinnati, in the State of Ohio, destined to points on the Georgia Railroad in the State of Georgia, are interstate traffic, and all the roads forming a part of the line over which such goods are carried are engaged in interstate commerce.

The defendants will be required to cease and desist from making any greater charge in the aggregate on buggies, carriages and other freight of the first class carried in less than carloads from Cincinnati to Social Circle than they charge on such freight from Cincinnati to Augusta, and said defendants will cease and desist from making any charge for the transportation of such freight from Cincinnati to Atlanta in excess of $1 per hundred pounds. This order to be in force from and after the 20th day of July, 1891.

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King & Co. *v.* New York, New Haven & Hartford Railroad Company *et al.*, 261, 262.

9. Little Rock & Memphis Railroad Company *v.* East Tennessee, Virginia & Georgia Railway Company *et al.*, 3 I. C. C. Rep., 1.
Capehart *et al. v.* Louisville & Nashville Railroad Company *et al.*, 265, 271.

10. American Wire Nail Company *v.* Queen & Crescent Fast Freight Line, 3 I. C. C. Rep., 224.

Holbrook *et al. v.* St. Paul, Minneapolis & Manitoba Railroad Company, 1 I. C. C. Rep., 103.
Lincoln Board of Trade *v.* Burlington & Missouri River Railroad Company, 2 I. C. C. Rep., 147.
Lincoln Board of Trade *v.* Union Pacific Railway Company, 3 I. C. C. Rep., 221.
Manufacturers' and Jobbers' Union of Mankato *v.* Minneapolis & St. Louis Railway Company *et al.*, 1 I. C. C. Rep., 227.
Pennsylvania Company *v.* Louisville & New Albany & Chicago Railway Company 3 I. C. C. Rep., 223.
Rawson *v.* Newport & Mississippi Valley Company, 3 I. C. C. Rep., 266.
Martin *v.* Southern Pacific Company *et al.*, 2 I. C. C. Rep., 1.
McMorran *v.* Grand Trunk Railway *et al.*, 3 I. C. C. Rep., 252.
New York Board of Trade and Transportation *v.* Pennsylvania Railroad Company *et al.*, 520, 526, 527.

11. New Orleans Cotton Exchange *v.* Cincinnati, New Orleans & Texas Pacific Railway Company *et al.*, 2 I. C. C. Rep., 375.
Coxe Brothers & Company *v.* Lehigh Valley Railroad Company, 563.

12. Scofield *et al. v.* Lake Shore & Michigan Southern Railway Company, 2 I. C. C. Rep., 90.
Shamberg *v.* Delaware, Lackawanna & Western Railroad Company *et al.*, 661.

13. Chamber of Commerce of the City of Milwaukee *v.* Flint & Pere Marquette Railroad Company *et al.*, 2 I. C. C. Rep., 553.
Mattingly *v.* Pennsylvania Company, 2 I. C. C. Rep., 592.
Boston Fruit and Produce Exchange *v.* New York & New England Railroad Company *et al.*, 677.

14. *In re* Tariffs and Classifications of Atlanta and West Point Railroad Company *et al.*, 3 I. C. C. Rep., 19, etc.
Hamilton & Brown *v.* Chattanooga, Rome & Columbus Railroad Company *et al.*, 691.

CASES DISTINGUISHED.

1. Rice *v.* Louisville & Nashville Railroad Company, 1 I. C. C. Rep., 503, etc.
Scofield *et al. v.* Lake Shore & Michigan Southern Railway Company, 2 I. C. C. Rep., 90, etc.
Rice, Robinson & Witherop *v.* Western New York & Pennsylvania Railroad Company, 134, 143, 145, 146, 152, 153, 154.

2. Capehart *et al. v.* Louisville & Nashville Railroad Company *et al.*, 4 I. C. C. Rep., 278.
Kentucky & Indiana Bridge Company *v.* Louisville & Nashville Railroad Company, 2 I. C. C. Rep., 162.
Lehmann, Higginson & Co. *v.* Southern Pacific Company *et al.*, 4 I. C. C. Rep., 1.
Little Rock & Memphis Railroad Company *v.* East Tennessee, Virginia & Georgia Railway Company *et al.*, 2 I. C. C. Rep., 1, etc.
Mattingly *v.* Pennsylvania Company, 3 I. C. C. Rep., 592.
New York & Northern Railway Company *v.* New York & New England Railroad Company *et al.*, 716, 717, 718, 726.

3. Andrews Soap Company *v.* Pittsburgh, Cincinnati & St. Louis Railway Company *et al.*, 4 I. C. C. Rep., 41.
Beaver & Company *v.* Pittsburgh, Cincinnati & St. Louis Railway Company *et al.*, 742.

CHARACTER OF TRAFFIC.

See TRAFFIC, 1.

CIRCUMSTANCES AND CONDITIONS.

1. WHAT CONSTITUTE DISSIMILAR.

Lehmann, Higginson & Company *v.* Southern Pacific Company *et al.*, 1.
Rice *v.* Atchison, Topeka & Santa Fe Railroad Company *et al.*, 228.
King & Company *v.* New York, New Haven & Hartford Railroad Company *et al.*, 251
Kauffman Milling Company *v.* Missouri Pacific Railway Company *et al.*, 417.

2. WHAT DO NOT CONSTITUTE DISSIMILAR.

Manufacturers' and Jobbers' Union of Mankato *v.* Minneapolis & St. Louis Railway Company *et al.*, 79.
San Bernardino Board of Trade *v.* Atchison, Topeka & Santa Fe Railroad Company *et al.*, 104.
Rice, Robinson & Witherop *v.* Western New York and Pennsylvania Railroad Company, 131.
New York Board of Trade and Transportation *et al. v.* Pennsylvania Railroad Company *et al.*, 447.
James & Mayer Buggy Company *v.* Cincinnati, New Orleans & Texas Pacific Railway Company *et al.*, 744.

3. TO WHAT THEY MUST RELATE TO CONSTITUTE EXCEPTION UNDER FOURTH SECTION.

James & Mayer Buggy Company *v.* Cincinnati, New Orleans & Texas Pacific Railway Company *et al.*, 744.

See LONG AND SHORT HAUL CLAUSE 1, 2; RELATIVE RATES 4; UNJUST DISCRIMINATION 1.

CLASSIFICATION.

1. MARKET VALUE. SHIPPERS' REPRESENTATIONS TO THE PUBLIC. MANUFACTURERS' DESCRIPTION.

In arranging the classification of articles of commerce, their market value and the shippers' representations to the public as to their character may properly be taken into account in ascertaining the analogy they bear to other articles, and determining the class to which they justly belong. This is especially applicable to articles in which there is no free competition among producers and shippers. And carriers are not required to estimate the intrinsic value of freight as distinguished from its commercial value for purposes of classification and rates.

Warner *v.* New York Central & Hudson River Railroad Company *et al.*, 32.

A manufacturer's description of an article to induce its purchase by the public also describes it for transportation, and carriers may accept his description for purposes of classification and rates. Carriers are not required to analyze freight to ascertain whether it is in fact inferior to the description or public representations under which it is sold, in order to give it a lower rate corresponding to its actual value.

Andrew Soap Company *v.* Pittsburgh, Cincinnati & St. Louis Railway Company *et al.*, 41.

2. VOLUME OF THE TRAFFIC.

The volume of traffic supplied by an article for transportation is also an element that may be considered in its classification, as a basis for rates that are reasonable both for carriers and shippers.

Warner *v.* New York Central & Hudson River Railroad Company *et al.*, 32.

3. PATENT MEDICINES.—In view of the much higher market value of patent medicines and the smaller volume of traffic they supply, a higher classi-

fication than for ale, beer and mineral water, in which there is much greater competition among shippers, is not unreasonable.—*Ib.*

4. Food Products.

In re Alleged Excessive Freight Rates and Charges on Food Products, 68.
Kauffman Milling Company *v.* Missouri Pacific Railway Company *et al.*, 417.

5. Soap. Prior to May, 1889, complainant's common soap was charged at fifth-class rates, net weight, but since these defendants have charged fifth-class rates at gross weight, *held*, that this difference operated to make the rate unreasonable.
Proctor & Gamble *v.* Cincinnati, Hamilton & Dayton Railroad Company *et al.*, 87.
Where two kinds of soap are made use of for the same purposes, and are advertised and held out to the world as suited for like purposes, and are substantially equal in value, they should both for purposes of transportation and rating be placed in the same classification.
Beaver & Company *v.* Pittsburgh, Cincinnati & St. Louis Railway Company *et al.*, 733.

6. Articles Classified alike Entitled to same Rates. Petroleum and its Products.
The classification of petroleum oil and its products in carloads adopted and generally applied by carriers is the same, and the rates upon oil and its products should correspond with their classification and be alike.
Rice, Robinson and Witherop *v.* Western New York & Pennsylvania Railroad Company, 131.

7. Rules. Surgical Chairs.—Where questions of classification and rates are involved as to one particular article of freight, it is often necessary to examine and consider the classification and rates upon other articles in which the same calculations in respect of value, bulk and expense of handling, and of carriage, would to a considerable extent enter; and for the purposes of such comparison it is not indispensably necessary that the articles should be competitive with each other, though if they are competitive then this feature must more strongly bring to view the fact of discrimination in rates, if there be such.
Harvard Company *v.* Pennsylvania Company *et al.*, 212.
The valuable service performed to the transportation interests of the country by rate and classification committees. Rules recognized by the Commission in making of classifications and rates.—*Ib.*

8. Classification Committee.—Complaints brought against a classification committee, whose powers are merely recommendatory, held insufficient.
McMillan & Company *v.* Western Classification Committee, 276.

9. Salted Hides and Pelts.—*Ib.*

10. Uniform. *Ib.*
Report of Interstate Commerce Commission, 364.
Reserving any questions that may arise in case a uniform classification shall be established, at present an exception to a general rule of classification or rate making may be justified by adequate considerations in view of dissimilar conditions in different portions of the country, and when a rigid application of a general rule will be injurious to important public interests, an exception is only reasonable.
Kauffman Milling Company *v.* Missouri Pacific Railway Company *et al.*, 417.

11. Recognized by Act.
Freight classification is deemed by the railroads convenient and essential to any practical system of rate making, and is so recognized, though not enjoined, by the Act to regulate commerce.
Coxe Brothers & Company *v.* Lehigh Valley Railroad Company, 535.

12. WHEN USED AS A DEVICE TO VIOLATE THE LAW, COMMISSION WILL REVISE AND CORRECT.—*Ib.*

COAL.

Haddock *v.* **Delaware, Lackawanna & Western Railroad Company**, 296.
Coxe Brothers & Company *v.* **Lehigh Valley Railroad Company**, 535.

COAL COMPANY.

CAPITAL STOCK OWNED BY RAILROAD COMPANY.
Coxe Brothers & Company *v.* **Lehigh Valley Railroad Company**, 535.
See UNJUST DISCRIMINAION, 12.

COMBINATION RATES.

1. THROUGH RATE TO COMPETITIVE POINT ADDED TO LOCAL RATE BACK TO DESTINATION.
Lehmann, Higginson & Company, *v.* **Southern Pacific Company**, 27.

2. THROUGH RATE TO COMPETITIVE POINT ADDED TO LOCAL RATE TO DESTINATION.
Hamilton & Brown *v.* **Chattanooga, Rome & Columbus Railroad Company** *et al.*, 686.
James & Mayer Buggy Company, *v.* **Cincinnati, New Orleans & Texas Pacific Railway Company** *et al.*, 744.

COMMERCE.

1. RAILROAD REGULATION IN THE STATES.
Report of Interstate Commerce Commission, 386.

2. RAILROAD REGULATION IN FOREIGN COUNTRIES.
Report of Interstate Commerce Commission, 387.
See INTERSTATE COMMERCE.

COMMERCIAL CONSIDERATIONS.

Warner *v.* **New York Central & Hudson River Railroad Company** *et al.*, 32.
Andrews Soap Company *v.* **Pittsburgh, Cincinnati & St. Louis Railway Company** *et al.*, 41.
In re Alleged Excessive Freight Rates and Charges on Food Products, 48.
Rice, Robinson & Witherop *v.* **Western New York & Pennsylvania Railroad Company**, 131.
Board of Trade of the City of Chicago *v.* **Chicago & Alton Railroad Company** *et al.*, 158.
Poughkeepsie Iron Company *v.* **New York Central & Hudson River Railroad Company** *et al.*, 195.
Delaware State Grange, etc. *v.* **New York, Philadelphia & Norfolk Railroad Company** *et al.*, 588.
Squire & Company *v.* **Michigan Central Railroad Company** *et al.*, 611.

COMMISSIONS.

PAYMENT OF.
Report of Interstate Commerce Commission, 406.

COMMODITIES.

See COMPETITION, 3.

COMMODITY RATES.

1. DESCRIBED AND DISCUSSED.
New York Board of Trade and Transportation *et al. v.* Pennsylvania Railroad Company *et al.*, 447.

2. POWER OF CARRIER TO MAKE.—*Ib.*

COMMON CONTROL, MANAGEMENT OR ARRANGEMENT.

1. DEFINED.—The words "common control, management or arrangement," as found in the first section of the Act to regulate commerce, defined and applied to the special facts of the case.
Boston Fruit and Produce Exchange *v.* New York & New England Railroad Company, *et al.*, 664.

COMPETITION.

1. WHAT IS LEGITIMATE.
Lehmann, Higginson & Company *v.* Southern Pacific Company *et al.*, 1.

2. WHAT IS NOT LEGITIMATE.—*Ib.*

3. BETWEEN PRODUCERS, LOCALITIES OR COMMODITIES.
Warner *v.* New York Central & Hudson River Railroad Company *et al.*, 32.
Andrews Soap Company *v.* Pittsburgh, Cincinnati & St. Louis Railway Company *et al.*, 41.
In re Alleged Excessive Freight Rates and Charges on Food Products, 48.
Manufacturers' & Jobbers' Union of Mankato *v.* Minneapolis & St. Louis Railway Company *et al.*, 79.
Rice, Robinson & Witherop *v.* Western New York & Pennsylvania Railroad Company, 131.
Board of Trade of the City of Chicago *v.* Chicago & Alton Railroad Company *et al.*, 158.
Poughkeepsie Iron Company *v.* New York Central & Hudson River Railroad Company *et al.*, 195.
Kauffman Milling Company *v.* Missouri Pacific Railway Company *et al.*, 417.
Coxe Brothers & Company *v.* Lehigh Valley Railroad Company, 535.
Squire & Company *v.* Michigan Central Railroad Company *et al.*, 611.
Hamilton & Brown *v.* Chattanooga, Rome & Columbus Railroad Company *et al.*, 686.
Beaver & Company *v.* Pittsburgh, Cincinnati & St. Louis Railway Company *et al.*, 733.

4. PUBLIC NOT TO BE DEPRIVED OF BENEFITS OF FAIR COMPETITION BY CONSOLIDATION.
Rice, Robinson & Witherop *v.* Western New York & Pennsylvania Railroad Company, 131.

5. WATER.
Lehmann, Higginson & Co. *v.* Southern Pacific Company *et al.*, 1.
San Bernardino Board of Trade *v.* Atchison, Topeka & Santa Fe Railroad Company *et al.*, 104.
Poughkeepsie Iron Company *v.* New York Central & Hudson River Railroad Company *et al.*, 195.
Rice *v.* Atchison, Topeka & Santa Fe Railroad Company *et al.*, 228.
King & Company *v.* New York, New England & Hartford Railroad Company *et al.*, 251.
Delaware State Grange etc. *v.* New York, Philadelphia & Norfolk Railroad Company *et al.*, 588.

James & Mayer Buggy Company *v.* Cincinnati, New Orleans & Texas Pacific Railway Company *et al.*, 744.

6. RAILROAD.

Squire & Company *v.* Michigan Central Railroad Company *et al.*, 611.

COMPETITIVE ARTICLES.

See COMPETITION, 3.

COMPETITIVE POINTS.

Lehmann, Higginson & Company *v.* Southern Pacific Company *et al.*, 1.
Manufacturers' and Jobbers' Union of Mankato *v.* Minneapolis & St. Louis Railway Company *et al.*, 79.
Board of Trade of the City of Chicago *v.* Chicago & Alton Railroad Company *et al.*, 158.
Poughkeepsie Iron Company *v.* New York Central & Hudson River Railroad Company *et al.*, 195.
Rice, Robinson & Witherop *v.* Western New York & Pennsylvania Railroad Company, 131.
Kauffman Milling Company *v.* Missouri Pacific Railway Company *et al.*, 417.
Squire & Company *v.* Michigan Central Railroad Company *et al.*, 611.
Hamilton & Brown *v.* Chattanooga, Rome & Columbus Railroad Company *et al.*, 686.
James & Mayer Buggy Company *v.* Cincinnati, New Orleans & Texas Pacific Railway Company *et al.*, 744.

COMPLAINANT.

1. WHEN PRECLUDED BY CONTRACT.

Haddock *v.* Delaware, Lackawanna & Western Railroad Company, 296.

2. MERCANTILE SOCIETY.—SPECIAL DAMAGE NEED NOT BE SHOWN.

The Boston Fruit and Produce Exchange is a mercantile society, such as is described in the thirteenth section of the Act, and as such has the right to maintain a proceeding like the present, without showing special damage to itself.

Boston Fruit and Produce Exchange *v.* New York & New England Railroad Company *et al.*, 664.

COMPLAINT.

1. WHEN SUFFICIENT UNDER FOURTH SECTION.

San Bernardino Board of Trade *v.* Atchison, Topeka & Santa Fe Railroad Company *et al.*, 104.
King & Company *v.* New York, New Haven & Hartford Railroad Company *et al.*, 251.

2. DUTY OF COMMISSION TO INVESTIGATE.

In re Alleged Excessive Freight Rates and Charges on Food Products, 116.

3. AMENDMENT, AFTER FILING OF DEMURRER.

Capehart *et al. v.* Louisville & Nashville Railroad Company *et al.*, 265.

4. INFORMAL.—Practice of Commission in regard to stated.

McMillan & Company *v.* Western Classification Committee, 276.

5. FORMAL.—*Ib.*

6. JURISDICTION.—Motion to dismiss *in toto* for want of jurisdiction on the ground that jurisdiction was precluded by contracts entered into prior to the Act denied, good ground of complaint being set forth in respect to northern and western shipments of coal from complainants mines.
Haddock *v.* Delaware, Lackawanna & Western Railroad Company, 296.

7. DISMISSAL AFTER CONCESSION OF RELIEF.
New York Board of Trade and Transportation *et al. v.* Pennsylvania Railroad Company *et al.*, 447.

See INTERSTATE COMMERCE COMMISSION, 1; PARTIES; PRACTICE, 1, 3, 4, 6, 8.

CONCESSION OF RELIEF.

1. PARTIAL.
Bates *v.* Pennsylvania Railroad Company *et al.*, 281.

2. GROUND FOR DISMISSAL OF COMPLAINT.
New York Board of Trade and Transportation *et al. v.* Pennsylvania Railroad Company *et al.*, 447.

3. WHEN REPARATION IS MADE NO ORDER WILL BE ISSUED.
New Orleans Cotton Exchange *v.* Louisville, New Orleans & Texas Railway Company, 694.

CONDITIONS.

See CIRCUMSTANCES AND CONDITIONS.

CONGRESS.

POWER TO REGULATE INTERSTATE COMMERCE ABSOLUTE.
Kauffman Milling Company *v.* Missouri Pacific Railway Company *et al.*, 417.

CONNECTING LINES.

1. WATER AND RAIL.
Capehart *et al. v.* Louisville & Nashville Railroad Company *et al.*, 265.
New York & Northern Railway Company *v.* New York & New England Railroad Company *et al.*, 702.

2. TRANSPORTATION OF INTERSTATE TRAFFIC BY INITIAL CARRIER BETWEEN POINTS IN THE SAME STATE.
Boston Fruit and Produce Exchange *v.* New York & New England Railroad Company *et al.*, 664.

3. TRANSPORTATION OF ITERSTATE TRAFFIC BY TERMINAL CARRIER BETWEEN POINTS IN THE SAME STATE.
James & Mayer Buggy Company *v.* Cincinnati, New Orleans & Texas Pacific Railway Company *et al.*, 744.

4. ONE LINE WHOLLY WITHIN A STATE.
New York & Northern Railway Company *v.* New York & New England Railroad Company *et. al.*, 702.

5. THROUGH CARRIAGE OVER.
King & Company *v.* New York, New Haven & Hartford Railroad Company *et al.*, 251.
Coxe Brothers & Co. *v.* Lehigh Valley Railroad Company *et al.*, 535.
Boston Fruit and Produce Exchange *v.* New York & New England Railroad Company *et al.*, 664.

See Long and Short Haul Clause, 6; Through Routes and Through Rates, 2, 4, 5, 6, 7; Common Control, Management or Arrangement.

CONSOLIDATION OF ROADS.

1. Competing Lines.

Rice, Robinson & Witherop *v.* Western New York & Pennsylvania Railroad Company, 131.

2. Subject Discussed.

Report of Interstate Commerce Commission, 409.

CONSTRUCTION.

See Act to Regulate Commerce.

CONSTITUTION.

See Interstate Commerce, 1.

CONTINUOUS CARRIAGE OF FREIGHTS.

Boston Fruit and Produce Exchange *v.* New York & New England Railroad Company *et al.*, 664.

See Seventh Section.

CONTRACTS.

1. Compulsory Production of.

In re Alleged Excessive Freight Rates and Charges on Food Products, 116.

Haddock *v.* Delaware, Lackawanna & Western Railroad Company *et al.*, 296.

Amendment of Act, 758.

2. Entered into Prior to the Act.

No claim is made that the validity of the contracts has been impaired or affected by the passage of the Act to Regulate Commerce, although the Commission distinctly propounded the inquiry whether such claim was made. And the Commission carefully abstains from expressing any opinion as to the effect of the Act to Regulate Commerce in impairing the validity of the contracts referred to.

Haddock *v.* Delaware, Lackawanna & Western Railroad Company, 296.

3. For Use of Improved Stock Cars owned by Shippers.

Shamberg *v.* Delaware, Lackawanna & Western Railroad Company *et al.*, 630.

4. Consideration of as Evidence after Filing.

Boston Fruit and Produce Exchange *v.* New York & New England Railroad Company *et al.*, 664.

5. For Through Lines.

New York & Northern Railway Company *v.* New York & New England Railroad Company *et al.*, 702.

See Evidence, 2, 5; Practice, 9, 10; Through Routes and Through Lines, 5, 6.

CORN AND CORN PRODUCTS.

Bates *v.* Pennsylvania Railroad Company *et al.*, 281.

COST OF CARRIAGE.

Lehmann, Higginson & Co. *v.* Southern Pacific Company *et al.*, 1.
In re Alleged Excessive Freight Rates and Charges on Food Products, 48.
Manufacturers' and Jobbers' Union of Mankato *v.* Minneapolis & St. Louis Railway Company *et al.*, 79.
Board of Trade of the City of Chicago *v.* Chicago & Alton Railroad Company *et al.*, 158.
Bates *v.* Pennsylvania Railroad Company *et al.*, 281.
New York Board of Trade and Transportation *et al. v.* Pennsylvania Railroad Company *et al.*, 447.

BASIS FOR ADJUSTMENT OF RELATIVE RATES.

The proper relation of rates for transportation of strictly competitive articles over the same line should be determined by reference to respective costs of service ascertained with reasonable accuracy.

Squire & Company *v.* Michigan Central Railroad Company *et al.*, 611.

COST OF PRODUCTION.

In re Alleged Excessive Freight Rates and Charges on Food Products, 48.
Poughkeepsie Iron Company *v.* New York Central & Hudson River Railroad Company *et al.*, 195.
Coxe Brothers & Company *v.* Lehigh Valley Railroad Company *et al.*, 535.
Delaware State Grange etc. *v.* New York, Philadelphia & Norfolk Railroad Company *et al.*, 588.
Squire & Co. *v.* Michigan Central Railroad Company *et al.*, 611.
Boston Fruit and Produce Exchange *v.* New York and New England Railroad Company *et al.*, 664.

COST OF SERVICE.

See COST OF CARRIAGE.

COTTON.

New Orleans Cotton Exchange *v.* Louisville, New Orleans & Texas Railway Company, 694.

DAMAGE.

See COMPLAINANT, 2.

DECISION.

1. APPLICATION LIMITED TO PRESENT SITUATION.

The decision in this case applies only to the present situation in the territory in question, and is not intended to lay down a permanent rule for the future nor to apply elsewhere.

Kauffman Milling Company *v.* Missouri Pacific Railway Company *et al.*, 417.

2. CHANGED AFTER RE-HEARING.

Bates *v.* Pennsylvania Company *et al.*, 281.

DEFINITIONS.

1. LIKE KIND OF TRAFFIC.

New York Board of Trade and Transportation *et al. v.* Pennsylvania Railroad Company *et al.*, 447.

2. COMMODITY RATES.—*Ib.*

3. SPECIAL CLASS RATES.—*Ib.*

4. COMMON CONTROL, MANAGEMENT OR ARRANGEMENT.

Boston Fruit and Produce Exchange *v.* New York & New England Railroad Company *et al.*, 664.

5. DISCRIMINATION AS USED IN THIRD SECTION.

New York & Northern Railway Company *v.* New York & New England Railroad Company *et al.*, 702.

DEPOSITIONS.

1. HOW TAKEN AND FILED, 758.

DEVICE.

Rice, Robinson & Witherop *v.* Western New York & Pennsylvania Railroad Company, 131.

Coxe Brothers & Company *v.* Lehigh Valley Railroad Company, 535.

Shamberg *v.* Delaware, Lackawanna & Western Railroad Company *et al.*, 630.

See UNJUST DISCRIMINATION, 6, 13; PREFERENCE OR ADVANTAGE, 15.

DISCRETION.

Lehmann, Higginson & Company *v.* Southern Pacific Company, 1.

Delaware State Grange etc. *v.* New York, Philadelphia & Norfolk Railroad Company *et al.*, 588.

Squire & Company *v.* Michigan Central Railroad Company *et al.*, 611.

DISCRIMINATION.

BETWEEN CONNECTING LINES.

Capehart *v.* Louisville & Nashville Railroad Company *et al.*, 265.

New York & Northern Railway Company *v.* New York & New England Railroad Company *et al.*, 702.

See THROUGH ROUTES AND THROUGH RATES, 2, 5; UNJUST DISCRIMINATION.

DISTANCE.

LONGER AND SHORTER.

See LONG AND SHORT HAUL CLAUSE; THROUGH AND LOCAL RATES; REASONABLE RATES, 11; MILEAGE RATES; PREFERENCE OR ADVANTAGE, 12,13, 16.

DIVIDENDS.

In re Alleged Excessive Freight Rates and Charges on Food Products, 48.

See REASONABLE RATES, 6.

DIVISIONS OF THROUGH RATES.

See THROUGH AND LOCAL RATES; MILEAGE RATES; REASONABLE RATES, 11.

DOCUMENTARY EVIDENCE.

See PRACTICE, 10; EVIDENCE, 3, 5; INTERSTATE COMMERCE COMMISSION, 1.

DOMESTIC MERCHANDISE.

New York Board of Trade and Transportation *et al. v.* Pennsylvania Railroad Company *et al.*, 447.

EQUIPMENT.

Rice, Robinson & Witherop *v.* Western New York & Pennsylvania Railroad Company, 131.
Delaware State Grange etc. *v.* New York, Philadelphia & Norfolk Railroad Company *et al.*, 588.
Shamberg *v.* Delaware, Lackawanna & Western Railroad Company *et al.*, 630.
Boston Fruit and Produce Exchange *v.* New York & New England Railroad Company *et al.*, 664.
See CARS.

ESTOPPEL.

CONTRACTS BETWEEN THE PARTIES.
Haddock *v.* Delaware, Lackawanna & Western Railroad Company, 296.

EVIDENCE.

1. CASES RETAINED FOR FURTHER SHOWING.
As to the other rail-carrier defendants in this proceeding, which are certain southern and southwestern railroads, it appears in a general way that there is water competition at Memphis, Vicksburg, New Orleans, Mobile and Galveston, but upon this point the evidence is not sufficiently clear to enable the Commission to determine the extent to which this competition at each of these points is actual and whether it involves traffic important in amount; and the Commission therefore retains the case as to these defendants, and will hereafter notify the parties as to the time when and the place where all such further evidence will be heard upon these points that the parties may desire to offer.
Rice *v.* Atchison, Topeka & Santa Fe Railroad Company *et al.*, 228.
The reduced rates are, however, in many cases still considerably above the rates on the same articles from Norfolk, and the showing not being sufficient to enable the Commission to determine satisfactorily how far the lower Norfolk rates were justified by the differences in the conditions and circumstances, that subject is left for future consideration.
Delaware State Grange etc., *v.* New York, Philadelphia & Norfolk Railroad Company, *et al.*, 588.

2. EFFECT OF CONTRACTS MADE PRIOR TO THE ACT.
Complainant is precluded, by the terms of the contract for shipping coal to Hoboken, from going into evidence to show that the rate on his coal to Hoboken ought to be different from that fixed by the contract; and witnesses and evidence asked for to that end are immaterial.
Haddock *v.* Delaware, Lackawanna & Western Railroad Company, 296.
The contracts providing that complainant may ship coal to points north and west, on the same terms and rates that respondent for the time being gives other persons, do not preclude complainant from showing that such rates are unjust, oppressive or unreasonable. Complainant is therefore entitled to a hearing upon that question.—*Ib.*

3. ORAL AND DOCUMENTARY.—Subpœna *duces tecum.*
The application for subpœnas *duces tecum* is denied. As applicable to contracts and papers of third persons, not before the Commission, it is denied on the ground of the injustice that might be done such persons; and generally (for the present at least) it is denied on the ground that the material facts can be proven by the testimony of witnesses, without the aid of documentary evidence; although respondent will be expected to produce, for purposes of examination, any books and papers of its own, material to the controversy.—*Ib.*

4. PROOF IN SUPPORT OF PETITION FOR RE-HEARING.
Proctor & Gamble *v.* Cincinnati, Hamilton & Dayton Railroad Company *et al.*, 443.

5. CONTRACTS AND TARIFFS FILED WITH COMMISSION.
Contracts and tariffs filed with the Commission under section six of the Act may be considered, although not specifically introduced in evidence on the hearing.
Boston Fruit and Produce Exchange *v.* New York & New England Railroad Company *et al.*, 664.

6. BY DEPOSITION.—How taken and filed, 758.
See BURDEN OF PROOF; PRACTICE, 2, 5, 7, 10, 11, 12.

EXCEPTIONAL CONDITIONS.
See CIRCUMSTANCES AND CONDITIONS.

EXPORT TRAFFIC.
New Orleans Cotton Exchange *v.* Louisville, New Orleans & Texas Railway Company, 694.

EXPRESS COMPANY.
LIVE STOCK.—Unlawful Device.
Shamberg *v.* Delaware, Lackawanna & Western Railroad Company *et al.*, 630.
See PREFERENCE OR ADVANTAGE, 15.

FACILITIES OF TRAFFIC.
EXTRAORDINARY FACILITIES AND RIGHTS OF WAY GIVEN TO PRIVATE LIVE STOCK CARS.—*Ib.*
See THROUGH ROUTES AND THROUGH RATES; PREFERENCE OR ADVANTAGE; TRAFFIC.

FAVOR IN TRANSPORTATION.
1. TO SHIPPERS OVER ONE DIVISION OF A CONSOLIDATED LINE.
Rice, Robinson & Witherop *v.* Western New York & Pennsylvania Railroad Company, 131.

2. TO COAL COMPANY, THE CAPITAL STOCK OF WHICH IS OWNED BY CARRIER.
Coxe Brothers & Company *v.* Lehigh Valley Railroad Company, 535.

3. TO OWNERS OF LIVE STOCK CARS.
Shamberg *v.* Delaware, Lackawanna & Western Railroad Company, *et al.*, 630.

FEDERAL AUTHORITY.
See INTERSTATE COMMERCE.

FIFTEENTH SECTION.
See ACT TO REGULATE COMMERCE, 13.

FINDINGS OF FACT BY COMMISSION.
1. PRIMA FACIE EVIDENCE IN UNITED STATES COURTS.
In re Alleged Excessive Freight Rates and Charges on Food Products, 116.

2. CORRECTION AFTER RE-HEARING.
Bates *v.* Pennsylvania Railroad Company *et al.*, 281.
See COST OF CARRIAGE.
3. ERROR IN.
Proctor & Gamble *v.* Cincinnati, Hamilton & Dayton Railroad Company *et al.*, 443.
4. COMMISSION TO DETERMINE WHAT ARE REASONABLE RATES.
Coxe Brothers & Company *v.* Lehigh Valley Railroad Company, 535.
See JUDICIAL AND ADMINISTRATIVE QUESTIONS, 337.

FIRST SECTION.

See ACT TO REGULATE COMMERCE, 5, 6; REASONABLE RATES; CARRIERS; RELATIVE RATES; CARS; INTERSTATE COMMERCE; TRAFFIC.

FIXED CHARGES.

In re Alleged Excessive Freight Rates and Charges on Food Products, 48.
See REASONABLE RATES, 6.

FLOUR.

In re Alleged Excessive Freight Rates and Charges on Food Products, 48.
King & Company *v.* New York, New Haven & Hartford Railroad Company *et al.*, 251.
Kauffman Milling Company *v.* Missouri Pacific Railway Company *et al.*, 417.

FOOD PRODUCTS.

In re Alleged Excessive Freight Rates and Charges on Food Products, 48, 116.

FOREIGN MERCHANDISE.

New York Board of Trade and Transportation *et al.*, *v.* Pennsylvania Railroad Company *et al.*, 447.

FOURTH ANNUAL REPORT.

Report of Interstate Commerce Commission, 325.

FOURTEENTH SECTION.

See ACT TO REGULATE COMMERCE, 13.

FOURTH SECTION.

See LONG AND SHORT HAUL CLAUSE; ACT TO REGULATE COMMERCE, 10.

FREIGHT.

See TRAFFIC; CONTINUOUS CARRIAGE OF FREIGHTS.

FRUIT.

Delaware State Grange etc. *v.* New York, Philadelphia & Norfolk Railroad Company *et al.*, 588.
Boston Fruit and Produce Exchange *v.* New York & New England Railroad Company *et al.*, 664.

GEOGRAPHICAL LOCATION.

See LOCATION.

GOVERNMENT AIDED RAILROAD AND TELEGRAPH LINES.

Report of Interstate Commerce Commission, 388.

GRAIN.

See FOOD PRODUCTS.

HEARING.

1. WHEN PRECLUDED BY CONTRACTS BETWEEN THE PARTIES.

Haddock *v.* Delaware, Lackawanna & Western Railroad Company, 296.

2. WHEN NOT PRECLUDED BY CONTRACTS BETWEEN THE PARTIES.—*Ib.*

See PRACTICE, 2, 5, 7, 8, 16; EVIDENCE.

HOGS AND HOG PRODUCT.

Board of Trade of the City of Chicago *v.* Chicago & Alton Railroad Company *et al.*, 158.

Squire & Company *v.* Michigan Central Railroad Company *et al.*, 611.

IMPORT TRAFFIC.

New York Board of Trade and Transportation *et al. v.* Pennsylvania Railroad Company *et al.*, 447.

INTERSTATE COMMERCE.

1. REGULATION.—Duties of the Commission under the Act to regulate commerce described.

In re Alleged Excessive Freight Rates and Charges on Food Products, 116.

The power to regulate commerce among the States is absolute in Congress and rates on such commerce may be regulated by federal authority with reference to trade conditions and circumstances of localities without infringing the rights or immunities of such commerce under the Constitution.

Kauffman Milling Company *v.* Missouri Pacific Railway Company *et al.*, 417.

The Act to regulate commerce specifically provides for the regulation of the transportation of foreign merchandise when brought from a foreign port of shipment to a port of entry of the United States and transported from such port of entry to a place within the United States upon a through bill of lading, or when transported from a foreign port to a port of entry of a foreign country adjacent to the United States and transported from such port of entry to a place of destination within the United States upon a through bill of lading.

New York Board of Trade and Transportation *et al. v.* Pennsylvania Railroad Company *et al.*, 447.

The regulation thus provided is such as regulates the rates, charges, facilities afforded and treatment of the foreign merchandise from the port of entry in either instance, as the case may be, to the place of destination of the merchandise within the United States, but it is not a regulation that extends to the control of rates made upon such foreign merchandise in the foreign port of shipment for its carriage to the port of entry of the United States or to the port of entry in a foreign country adjacent to the United States.—*Ib.*

A railroad company carrying coal as interstate traffic is the owner of the capital stock of a coal company, which under its charter holds lands, mines, buys and sells coal, and ships over the lines of said railroad company. *Held*, where such conditions result in violations of the Act to regulate commerce, the only regulation practicable is the enforcement of the provisions of the Act requiring rates to be reasonable.

Coxe Brothers & Company *v.* Lehigh Valley Railroad Company, 535.

The Commission is required to determine what rates are reasonable as well as what are unreasonable.—*Ib.*

2. Practical Workings of Regulation.

Report of Interstate Commerce Commission, 333.

3. What Is.

Boston Fruit and Produce Exchange *v.* New York & New England Railroad Company *et al.*, 664.

James & Mayer Buggy Company *v.* Cincinnati, New Orleans & Texas Pacific Railway Company *et al.*, 744.

INTERSTATE COMMERCE COMMISSION.

1. Powers and Duties.

In fixing reasonable rates the requirements of operating expenses, bonded debt, fixed charges, and dividend on capital stock from the total traffic are all to be considered, but the claim that any particular rate is to be measured by these as a fixed standard, below which the rate may not lawfully be reduced, is one rightly subject to some qualifications, one of which is, the obligations must be actual and in good faith.

In re Alleged Excessive Freight Rates and Charges on Food Products, 48.

The Act to regulate commerce makes it the duty of the Interstate Commerce Commission to execute and enforce the provisions of the Act which require rates and charges to be reasonable. In the performance of this duty the Commission has authority to inquire into the management of the business of common carriers and to require the attendance and testimony of witnesses, the production of books and papers, tariffs and contracts relating to any matter under investigation. To enforce its authority in this respect the Commission must invoke the aid of a court of the United States.

In re Alleged Excessive Freight Rates and Charges on Food Products, 116.

Amendment of Act, 758.

When applied to by petition the Commission must investigate matters complained of, and must, to enforce the Act, make investigations and prosecute inquiries instituted on its own motion. On making any investigation, the Commission is required to make a report in writing of its recommendations, conclusions and the findings of fact on which its conclusions are based, which recommendations and conclusions, if not complied with, can only be enforced through the courts after trial, in accordance with established procedure. In such trial the facts found by the Commission, in conformity with the statute, have legal effect and are *prima facie* evidence; but the recommendations, conclusions and orders of the Commission are of no binding force in the courts.

In re Alleged Excessive Freight Rates and Charges on Food Products, 116.

The Commission having entered upon inquiry and investigation as to the reasonableness of transportation rates on food products and given notice of the time and place of taking testimony and afforded opportunity for calling and cross-examination of witnesses: *Held*, That such proceeding was a substantial compliance with the statute.—*Ib.*

Has no power to order advance of rates, citing and affirming decision.

In re Chicago, St. Paul & Kansas City Railway Company.
Poughkeepsie Iron Company *v.* New York Central & Hudson River Railroad Company *et al.*, 211.

The Commission cannot, for the purpose of discovering and preventing unjust discrimination by the respondent, which is both a shipper and a carrier of its own product *via* its line, compel it to keep separate accounts showing what it charges itself for transportation or what the cost of transportation to it is.
Haddock *v.* Delaware, Lackawanna & Western Railroad Company, 296.

When classification is used as a device to effect unjust discrimination or as a means of violating other provisions of the statute, the Act requires the Commission to so revise and correct such classification and arrangement as to correct the abuse.
Coxe Brothers & Company *v.* Lehigh Valley Railroad Company, 535.

The Act to regulate commerce declares every unreasonable charge unlawful, requires the Commission to enforce its provisions and confers the power, and imposes on the Commission the duty of determining what are reasonable rates, as well as what are unreasonable.—*Ib.*

2. After Reparation no Order will be Made.
New Orleans Cotton Exchange *v.* Louisville, New Orleans & Texas Railway Company, 696.

3. Omission to Challenge Schedules of Rates on File.
The omission or failure to challenge or disapprove the schedules of rates filed cannot have the effect of making rates lawful which are unreasonable.
San Bernardino Board of Trade *v.* Atchison, Topeka & Santa Fe Railroad Company *et al.*, 104.

4. Investigations and Informal Complaints.
McMillan & Company *v.* Western Classification Committee, 276.

5. Fourth Annual Report of, 325.

6. Statistical Report of.
Report of Interstate Commerce Commission, 402.

7. May Order Depositions to be Taken, 758.

INSTRUMENTALITIES OF SHIPMENT OR CARRIAGE.

Rice, Robinson & Witherop *v.* Western New York & Pennsylvania Railroad Company, 131.
Delaware State Grange etc. *v.* New York, Philadelphia & Norfolk Railroad Company *et al.*, 588.
Shamberg *v.* Delaware, Lackawanna & Western Railaoad Company *et al.*, 630.
Boston Fruit and Produce Exchange *v.* New York & New England Railroad Company *et al.*, 664.

INVESTIGATIONS.

In re Alleged Excessive Freight Rates and Charges on Food Products, 48, 116.
McMillan & Company *v.* Western Classification Committee, 276.

IRON.

Pig.
Poughkeepsie Iron Company *v.* New York Central & Hudson River Railroad Company *et al.*, 195.

JUDICIAL AND ADMINISTRATIVE QUESTIONS.

Report of Interstate Commerce Commission, 337.

JURISDICTION.

Haddock *v.* Delaware, Lackawanna & Western Railroad Company, 296.
New York Board of Trade and Transportation *et al. v.* Pennsylvania Railroad Company *et al.*, 447.
Boston Fruit and Produce Exchange *v.* New York & New England Railroad Company *et al.*, 664.
James & Mayer Buggy Company *v.* Cincinnati, New Orleans & Texas Pacific Railway Company *et al.*, 744.

JOINT TARIFFS.

See TARIFFS.

LIKE KIND OF TRAFFIC.

DEFINITION.
New York Board of Trade and Transportation *et al. v.* Pennsylvania Railroad Company *et al.*, 447.

LIVE STOCK.

1. HOGS AND HOG PRODUCT.
Board of Trade of the City of Chicago *v.* Chicago & Alton Railroad Company *et al.*, 158.
Squire & Company *v.* Michigan Central Railroad Company *et al.*, 611.
2. CATTLE AND DRESSED BEEF.
Squire & Company *v.* Michigan Central Railroad Company *et al.*, 611.
3. TRANSPORTATION IN IMPROVED STOCK CARS.
Shamberg *v.* Delaware, Lackawanna & Western Railroad Company *et al.*, 630.

See CARS, 4, 7, 9; PREFERENCE OR ADVANTAGE, 14, 15; RELATIVE RATES, 6, 7; UNJUST DISCRIMINATION, 1, 7, 14, 15.

LIVE STOCK CARS.

REFUSAL TO FURNISH IMPARTIALLY.
Shamberg *v.* Delaware, Lackawanna & Western Railroad Company *et al.*, 630.

See CARS, 4, 7, 9.

LOCALITIES.

See LOCATION; PREFERENCE OR ADVANTAGE, 3, 4, 5, 6, 8, 13, 14, 16; RELATIVE RATES, 1, 4, 5, 6, 7, 9; UNJUST DISCRIMINATION, 1, 4, 9, 16.

LOCATION.

ADVANTAGES AND DISADVANTAGES.
Lehmann, Higginson & Company *v.* Southern Pacific Company *et al.*, 1.
In re Alleged Excessive Freight Rates and Charges on Food Products, 48.
Board of Trade of the City of Chicago *v.* Chicago & Alton Railroad Company *et al.*, 158.

Poughkeepsie Iron Company *v.* New York Central & Hudson River Railroad Company *et al.*, 195.
King & Company *v.* New York, New Haven & Hartford Railroad Company *et al.*, 251.
Bates *v.* Pennsylvania Railroad Company *et al.*, 281.
Kauffman Milling Company *v.* Missouri Pacific Railway Company *et al.*, 417.
Squire & Company *v.* Michigan Central Railroad Company *et al.*, 611.

LOCAL RATES.

Lehmann, Higginson & Company *v.* Southern Pacific Company *et al.*, 1.
Poughkeepsie Iron Company *v.* New York Central & Hudson River Railroad Company *et al.*, 195.
King & Company *v.* New York, New Haven & Hartford Railroad Company *et al.*, 251.
Capehart *et al. v.* Louisville & Nashville Railroad Company *et al.*, 265.
Coxe Brothers & Company *v.* Lehigh Valley Railroad Company, 535.
Hamilton & Brown *v.* Chattanooga, Rome & Columbus Railroad Company *et al.*, 686.
James & Mayer Buggy Company *v.* Cincinnati, New Orleans & Texas Pacific Railway Company *et al.*, 744.

See THROUGH AND LOCAL RATES.

LONG AND SHORT HAUL CLAUSE.

1. WHEN EXCEPTIONAL RATES SHOULD BE DISCONTINUED.

The general rule contemplated by the statute of equitably graduated charges on like traffic with reasonable reference to the amount of the service, is just in itself, and commonly most beneficial both to the carriers and to the public, and is only to be departed from when justified by exceptional conditions, and in such instances no longer than the conditions require.

Lehmann, Higginson & Company *v.* Southern Pacific Company *et al.*, 1.

2. CIRCUMSTANCES AND CONDITIONS.—Water Competition.

A lower charge for a longer distance for transportation of like traffic may be justified by actual water competition of controlling force, relating to traffic important in amount; and among the circumstances and conditions that may be considered in estimating the dissimilarity created by water competition are the character of the roads, the character of the traffic, the preponderance of empty cars moving in a direction in which the traffic must be taken, and the legitimacy of the competition by the rail carrier.—*Ib.*

The water competition which will justify a greater charge for a shorter distance by railroads must be actual. Possible competition will not justify such greater charge under the provisions of the fourth section of the Act to regulate commerce.

San Bernardino Board of Trade *v.* Atchison, Topeka & Santa Fe Railroad Company *et al.*, 104.

Competition as a factor in making rates: The competition between all-water lines and the all-rail lines in the carriage of petroleum and its products from the port of New York to San Francisco, Oakland, Sacramento, Stockton, Marysville, San Jose and San Diego, in the State of California, is actual and involves the transportation of traffic important in amount.

The competition between the part-rail and part-water lines, and the part-pipe lines and the part-water lines, on the one side, from the oil fields of Pennsylvania and Ohio, *via* the port of New York to San Francisco, Oakland, Sacramento, Stockton, Marysville, San Jose, San Diego

and Los Angeles, in California, in the carriage of petroleum and its products, on the one hand, and the competition of the all-rail lines on the other, in the carriage of the same kinds of property from and to the the same points named, is a competition that is actual and involves the transportation of traffic important in amount.

Held, on these facts and upon the authority of numerous decisions cited in this opinion, a dissimilarity of circumstances and conditions is thus shown to exist at the California points named as compared to the circumstances and conditions which exist in the carriage of this traffic by the all-rail lines at intermediate points along such all-rail lines, and that it is such a dissimilarity of circumstances and conditions as is recognized by the Act to regulate commerce and warrants the all-rail lines in making such just and reasonable rates as will enable them to meet the low rates and competition of the competing all-water lines and of the competing part-water and part-rail lines at said California points above named, and that in doing so the said all-rail lines are not obliged to make their rates at intermediate points along their lines as low as the rates forced upon them by the competition at said California points above named, viz.: San Francisco, Oakland, Sacramento, Stockton, Marysville, San Jose, Los Angeles and San Diego.

Rice *v.* Atchison, Topeka & Santa Fe Railroad Company *et al.*, 228.

A line of steamships plying between New York and Boston every other day makes the distance in 24 hours, does the largest part of the carrying trade of the grocers of Boston on shipments from New York, carries flour from New York to Boston for 8½ cents per hundred pounds; other lines, part water and part rail, known as the "Sound Lines," make daily trips between New York and Boston, and carry flour from New York to Boston at 9 cents per hundred pounds: an all-rail line composed of the lines of the defendants, upon through billing and through rates to Boston alone on shipments from New York, makes daily runs between these points and carries flour from New York to Boston at 9 cents per hundred pounds; each and all of these carriers are in actual competition for this business, and it involves the carriage of traffic important in amount.

Held, upon the facts, that this is a case in which the circumstances and conditions in the carriage of this commodity are substantially dissimilar at Boston to what they are at Readville, an interior town about eight miles from Boston, on the line of the all-rail carriers, where no competition exists between the all-rail carriers and the water lines, and justifies the all-rail carriers in meeting the rate by the water line at Boston by charging 9 cents per hundred pounds on flour, while the combined local rates of the two rail carriers are higher upon shipments of this kind of freight from New York to Readville than they are upon the joint through rate from New York to Boston.

King & Company *v.* New York, New Haven & Hartford Railroad Company *et al.*, 251.

The joint through rate to Boston on flour is one that is forced upon the all-rail carriers by the competition of a water line not subject to the Act to regulate commerce, and is a rate, low as it is, in which there is a small margin of profit to the all-rail carriers, while the combined local rates to Readville, although considerably higher, relate to a service that is wholly different in all its material features, methods and aspects, rendered by the carriers under circumstances and conditions that are substantially dissimilar.—*Ib.*

The circumstances and conditions which make a greater charge for a shorter distance lawful relate to the nature and character of the transportation service rendered by the carrier over the same line to the longer and shorter distance points.

James & Mayer Buggy Company *v.* Cincinnati, New Orleans & Texas Pacific Railway Company *et al.*, 744.

Water competition, to justify the greater charge for the shorter distance, must be competition in transportation to the longer-distance point and as to freight which, if not carried over the line on which it is located, would reach such destination by water transportation.—*Ib.*

3. SUFFICIENCY OF COMPLAINT. BURDEN OF PROOF. — Where complaint alleges that a greater charge, in the aggregate, for the transportation of a like kind of property, is made for a shorter than for a longer distance, over the same line in the same direction, the shorter being included in the longer, and that an unlawful preference is thereby given one locality over another, *Held*, complaint is sufficient to put the carriers on proof that the services were rendered under such dissimilar circumstances as to justify the greater charge.

San Bernardino Board of Trade *v.* Atchison, Topeka & Santa Fe Railroad Company *et al.*, 104.

4. TRANSPORTATION OF FOOD PRODUCTS.—The margin of profit on food products is too small to justify the imposition on any part of them of other than its own necessary burdens, and before the higher charge can be imposed on a shorter distance State, it will be necessary to repeal the fourth section of the Interstate Commerce law, and the common law as well.

In re Alleged Excessive Freight Rates and Charges on Food Products, 77.

5. SAME CHARGE FOR LONGER AND SHORTER DISTANCES.—There is nothing in this provision which prevents the roads from imposing the same freight charges on shorter distance traffic which is not found in the common law requiring reasonable rates.—*Ib.*

The "blanket rate," as it is called, by which the same rate is charged by the all-rail lines from the City of New York, and from all points in the oil producing regions in the States of Pennsylvania, Ohio and West Virginia, and from all the territory in the United States east of the 97th meridian of longitude, in the carriage of petroleum and its products to San Francisco, Oakland, Sacramento, Stockton, Marysville, San Jose, Los Angeles and San Diego, in the State of California, is a rate that has its origin in and is based upon actual competition for the carriage of this large traffic, on the one side, by the all-rail lines, and on the other side, by the lines part rail and part water, and also, in some instances, all-water lines, and also in other instances, part-pipe lines and part-water lines; and it is a rate of which petitioner has no right to complain as being a violation of the fourth section of the Act to regulate commerce, because it does not appear from the evidence that it is a violation of that section.

Rice *v.* Atchison, Topeka & Santa Fe Railroad Company *et al.*, 228.

Ordinarily longer distances warrant higher charges, but carriers may lawfully accept the same aggregate, though less profitable, rates for longer distances, provided such carriers do not subject any particular person, company, firm, corporation or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage."

James & Mayer Buggy Company *v.* Cincinnati, New Orleans & Texas Pacific Railway Company *et al.*, 744.

6. DECLARATION BY CARRIER THAT IT IS A LOCAL CARRIER TO CERTAIN STATIONS ON ITS LINE.—Goods shipped from Cincinnati, Ohio, to points in the State of Georgia are interstate traffic, and all the roads forming a part of the line over which such goods are carried to their destination are engaged in interstate commerce and are subject to the Act to regulate commerce. Where two or more roads forming a continuous connecting line between points in different States bill and carry interstate traffic through to certain stations on the last road forming such line,

neither the roads together nor any one of them can evade the obligations of the fourth section of said Act by declaring that as to such traffic destined to such station on such terminal road it is a local carrier.—*Ib.*

7. PERISHABLE FREIGHT.—The complaint was that the defendants' charges for the transportation of specified perishable articles of truck-farming from stations on their lines of railroad to Jersey City and Philadelphia were excessive and unreasonable, and that the charges were higher for the shorter distances from their stations on the Peninsula in Delaware and Maryland than for the longer distance from Norfolk, Virginia. It was found that the charges on certain articles specified from stations on the Peninsula were excessive and a reduction was ordered. The reduced rates are, however, in many cases still considerably above the rates on the same articles from Norfolk, and, the showing not being sufficient to enable the Commission to determine satisfactorily how far the lower Norfolk rates were justified by the differences in the conditions and circumstances, that subject is left for future consideration.
Delaware State Grange etc. *v.* New York, Philadelphia & Norfolk Railroad Company *et al.*, 588.

8. RATES LOWER TO BASING POINT THAN TO SHORTER DISTANCE LOCAL POINT.
Hamilton & Brown *v.* Chattanooga, Rome & Columbus Railroad Company *et al.*, 692.

9. LONG AND SHORT HAULS DISCUSSED.
Report of Interstate Commerce Commission, 371.

MANUFACTURER'S DESCRIPTION.

MAY BE ACCEPTED BY CARRIERS FOR PURPOSES OF CLASSIFICATION AND RATES.
Warner *v.* New York Central & Hudson River Railroad Company *et al.*, 32.
Andrews Soap Company *v.* Pittsburgh, Cincinnati & St. Louis Railway Company *et al.*, 41.
Beaver & Company *v.* Pittsburgh, Cincinnati & St. Louis Railway Company *et al.*, 733.

MANUFACTURING INDUSTRY.

Board of Trade of the City of Chicago *v.* Chicago & Alton Railroad Company *et al.*, 158.
Poughkeepsie Iron Company *v.* New York Central & Hudson River Railroad Company *et al.*, 195.
Bates *v.* Pennsylvania Railroad Company *et al.*, 281.
Squire & Company *v.* Michigan Central Railroad Company *et al.*, 611.

MARKETS.

CREATION OR DESTRUCTION OF PROFITABLE MARKETS BY CARRIERS UNLAWFUL.
Rice, Robinson & Witherop *v.* Western New York & Pennsylvania Railroad Company, 131.
Delaware State Grange etc. *v.* New York, Philadelphia & Norfolk Railroad Company *et al.*, 588.
Squire & Company *v.* Michigan Central Railroad Company *et al.*, 611.

MERCANTILE SOCIETY.

Boston Fruit & Produce Exchange *v.* New York & New England Railroad Company *et al.*, 664.

See COMPLAINANT, 2.

MERCHANDISE.

FOREIGN AND DOMESTIC.

New York Board of Trade and Transportation *et al. v.* Pennsylvania Railroad Company *et al.*, 447.

See TRAFFIC.

MILEAGE RATES.

Lehmann, Higginson & Company *v.* Southern Pacific Company *et al.*, 1.
Poughkeepsie Iron Company *v.* New York Central & Hudson River Railroad Company *et al.*, 195.
Coxe Brothers & Company *v.* Lehigh Valley Railroad Company, 535.
See REASONABLE RATES, 11; LONG AND SHORT HAUL CLAUSE, 1.

NOTICE.

TIME AND PLACE OF TAKING TESTIMONY.

In re Alleged Excessive Freight Rates and Charges on Food Products, 116.

OPERATING EXPENSES.

In re Alleged Excessive Freight Rates and Charges on Food Products, 48.

See REASONABLE RATES, 6.

ORDER.

1. ENFORCEMENT OF.

In re Alleged Excessive Freight Rates and Charges on Food Products, 116.

2. VACATED AFTER RE-HEARING.

Bates *v.* Pennsylvania Railroad Company *et al.*, 281.

3. OF REPARATION.

New Orleans Cotton Exchange *v.* Louisville, New Orleans & Texas Railway Company, 694.

4. TO SHOW CAUSE.

Hamilton & Brown *v.* Chattanooga, Rome & Columbus Railroad Company *et al.*, 686.

PACKING HOUSE PRODUCT.

Board of Trade of the City of Chicago *v.* Chicago & Alton Railroad Company *et al.*, 158.
Squire & Company *v.* Michigan Central Railroad Company *et al.*, 611.

PARTIES.

1. ABSENCE OF NECESSARY.—Effect on decision.

Poughkeepsie Iron Company *v.* New York Central & Hudson River Railroad Company *et al.*, 195.
Hamilton & Brown *v.* Chattanooga, Rome & Columbus Railroad Company *et al.*, 686.

2. INTERESTED.—Entitled to be heard.—*Ib.*

McMillan & Company *v.* Western Classification Committee, 276.

3. CARRIERS CONCERNED IN MATTERS COMPLAINED OF SHOULD BE MADE PARTIES DEFENDANT. CLASSIFICATION COMMITTEE. COMPLAINT, FORMAL AND INFORMAL.—Whether a complaint to the Interstate Commerce Commission in regard to classification and rates is formal or informal, it is not enough that it be made against a classification committee or a rate committee concerning grievances alleged to be perpetrated by carriers in the matter of classification and rates, who are represented to some extent by such classification or rate committee in making rates, but which carriers are not bound to accept such classification and rates and do not accept them any further than they see proper to do so; in such a case the carriers who, it is alleged, are guilty of perpetrating the grievances should be made the parties defendant to the complaint and the complaint should point them out by name.—*Ib.*

The Western Classification Committee in the making of classification and rates represents about seventy-five railroad companies, but the classification and rates made by this committee are merely recommendatory to the carriers in the association and it is not obligatory upon the carriers to accept and operate them; some of the carriers upon such articles, for example, salted hides and pelts in less than carloads, make commodity rates of their own upon the classification and rates different from those prepared and recommended by the Classification Committee, while other carriers do not; upon a complaint by a shipper against the Classification Committee alone, upon this statement of facts, it is evident that no investigation or order that the Commission could make would have any binding effect whatever upon the carriers.—*Ib.*

4. WHEN ABSENT PARTIES WILL BE CITED IN AFTER DECISION.

Hamilton & Brown *v.* Chattanooga, Rome & Columbus Railroad Company *et al.*, 686.

5. TAKING OF DEPOSITIONS BY EITHER UNDER ACT TO REGULATE COMMERCE AS AMENDED, 758.

See PRACTICE, 3, 4.

PATENT MEDICINES.

Warner *v.* New York Central & Hudson River Railroad Company *et al.*, 32.

PEACHES.

Delaware State Grange etc. *v.* New York, Philadelphia & Norfolk Railroad Company *et al.*, 588.

Boston Fruit and Produce Exchange *v.* New York & New England Railroad Company *et al.*, 664.

PERISHABLE FREIGHT.

1. SPECIAL TRAIN SERVICE.

Delaware State Grange etc. *v.* New York, Philadelphia & Norfolk Railroad Company *et al.*, 588.

Boston Fruit and Produce Exchange *v.* New York & New England Railroad Company *et al.*, 664.

2. TRANSPORTATION CHARGES.—*Ib.*

PETITION.

See COMPLAINT; PARTIES; PRACTICE, 1, 6, 8.

PETROLEUM AND ITS PRODUCTS.

Rice, Robinson & Witherop *v.* Western New York & Pennsylvania Railroad Company, 131.

Rice *v.* Atchison, Topeka & Santa Fe Railroad Company *et al.*, 228.

PORT OF ENTRY.

1. In United States.

New York Board of Trade and Transportation *et al. v.* Pennsylvania Railroad Company *et al.*, 447.

2. In Adjacent Foreign Country.—*Ib.*

PRACTICE.

1. Complaint when sufficient under Fourth Section.

San Bernardino Board of Trade *v.* Atchison, Topeka & Santa Fe Railroad Company *et al.*, 104.

King & Company *v.* New York, New Haven & Hartford Railroad Company *et al.*, 251.

2. Notice of Hearing. Testimony. Regularity of Proceeding.

The Commission having entered upon inquiry and investigation as to the reasonableness of transportation rates on food products, and given notice of the time and place of taking testimony, and afforded opportunity for calling and cross-examination of witnesses: *Held*, That such proceeding was a substantial compliance with the statute.

In re Alleged Excessive Freight Rates and Charges on Food Products, 116.

3. Absence of necessary Parties.—Effect on Decision.

Poughkeepsie Iron Company *v.* New York Central & Hudson River Railroad Company *et al.*, 195.

McMillan & Company *v.* Western Classification Committee, 276.

Hamilton & Brown *v.* Chattanooga, Rome & Columbus Railroad Company *et al.*, 686.

4. Interested Parties entitled to be heard.—*Ib.*

5. Cases retained for further Evidence.

Rice *v.* Atchison, Topeka & Santa Fe Railroad Company *et al.*, 228.

Delaware State Grange etc. *v.* New York, Philadelphia & Norfolk Railroad Company *et al.*, 588.

6. Amendment of Complaint after Demurrer.

Capehart *et al. v.* Louisville & Nashville Railroad Company *et al.*, 265.

7. Re-hearing.—Former order vacated.

Bates *v.* Pennsylvania Railroad Company *et al.*, 281.

8. Petition for Re-hearing.

A petition or motion for re-hearing cannot be granted on mere allegation of error in the findings of fact, and such a petition or motion must be supported by proof showing *prima facie* at least that there was such error. The affidavits in this case fail to make such showing.

Proctor & Gamble *v.* Cincinnati, Hamilton & Dayton Railroad Company *et al.*, 443.

9. Effect of Contracts between the Parties made prior to Act.

Haddock *v.* Delaware, Lackawanna & Western Railroad Company, 296.

10. Subpœnas *duces tecum*. Oral and Documentary Evidence. Third Parties.

The application for subpœnas *duces tecum* is denied. As applicable to contracts and papers of third persons, not before the Commission, it is denied on the ground of the injustice that might be done such persons; and generally (for the present at least) it is denied on the ground that the material facts can be proven by the testimony of witnesses,

without the aid of documentary evidence; although respondent will be expected to produce, for purposes of examination, any books and papers of its own, material to the controversy.—*Ib.*

11. PRODUCTION OF DOCUMENTARY EVIDENCE UNDER ACT TO REGULATE COMMERCE AS AMENDED, 758.

12. ATTENDANCE OF WITNESSES.

Amendment of Act to regulate commerce, 758.

13. CONCESSION OF RELIEF.

New York Board of Trade and Transportation *et al.* *v.* Pennsylvania Railroad Company Co. *et al.*, 447.

New Orleans Cotton Exchange *v.* Louisville, New Orleans & Texas Railway Company, 694.

14. DECISION LIMITED TO PRESENT SITUATION.

Kauffman Milling Company *v.* Missouri Pacific Railway Company *et al.*, 417.

15. DECISION.

The Act requires the Commission to determine what are reasonable rates as well as what are unreasonable; also to revise and correct abuses in classification.

Coxe Brothers & Company *v.* Lehigh Valley Railroad Company, 535.

Delaware State Grange etc. *v.* New York, Philadelphia & Norfolk Railroad Company *et al.*, 588.

16. ORDER TO SHOW CAUSE AFTER DECISION TO INTERESTED CARRIERS NOT PARTIES.

Hamilton & Brown *v.* Chattanooga, Rome & Columbus Railroad Company *et al.*, 686.

17. ORDER OF REPARATION.

Where a carrier corrects the inequality of rates complained of, and thus makes all the reparation asked in the complaint, or that the Commission could afford, no order is required and none will be issued.

New Orleans Cotton Exchange *v.* Louisville, New Orleans & Texas Railway Company, 694.

See BURDEN OF PROOF; EVIDENCE; COMPLAINANT; PARTIES.

PREFERENCE OR ADVANTAGE.

1. PATENT MEDICINES.

Upon complaint that patent medicines should be classified the same as ale, beer and mineral water: *Held*, that in view of the higher market value of the medicines and the smaller volume of traffic they supply, a higher classification than for the other articles named is not unreasonable.

Warner *v.* New York Central & Hudson River Railroad Company *et al.*, 32.

2. SOAPS.

Upon complaint by a manufacturer of soap, advertised and sold as toilet soap, charging unjust discrimination by classifying his product in the second class with other toilet soaps, and not in the fourth class with laundry soaps, as he claims it should be classed for the reason that his toilet soap is not substantially superior to soap put on the market by certain other manufacturers as laundry soap, which, under that description, is transported at a lower rate: *Held*, that the manufacturer's description of his product for commercial purposes as an article of superior grade and value warrants its classification accordingly, and carriers are not required to classify and transport it as a laundry soap.

Andrews Soap Company *v.* Pittsburgh, Cincinnati & St. Louis Railway Company *et al.*, 41.

3. BETWEEN LOCALITIES.

Where a reduced rate is made at the terminus of a through route, under the compulsion of competition a town not located on the line of the through route, but reached over a lateral connecting road, has a disadvantage of situation entailing some additional expense, and a reasonably higher rate to such town than the forced competitive rate to the more distant terminus of the through route, is not unjust discrimination.

Lehmann, Higginson & Company *v.* Southern Pacific Company *et al.*, 1.

When a carrier engages in transportation for which, by reason of competitive conditions or for purposes of its own, it receives low rates from some patrons and at some localities, it accepts the legal obligation to give impartial service to other patrons and at other localities that sustain similar relations to the traffic.

Manufacturers' and Jobbers' Union of Mankato *v.* Minneapolis & St. Louis Railway Company *et al.*, 79.

4. BETWEEN LOCALITIES LOCATED ON DIFFERENT DIVISIONS OF CONSOLIDATED LINE.

Rice, Robinson & Witherop *v.* Western New York & Pennsylvania Railroad Company, 131.

5. BETWEEN LOCALITIES.—Wheat and Flour.

Kauffman Milling Company *v.* Missouri Pacific Railway Company, 417.

6. BETWEEN LOCALITIES.—Hogs and Hog Products.

Board of Trade of the City of Chicago *v.* Chicago & Alton Railroad Company *et al.*, 158.

Squire & Company *v.* Michigan Central Railroad Company *et al.*, 611.

7. PETROLEUM AND ITS PRODUCTS. TANK CARS AND BARRELS.

When a carrier engages in transporting oil in tanks, and also in barrels conveyed in box cars, in carloads, and charges for the weight of the barrel as well as the oil carried by the box-car mode of transportation, but for the weight of the oil only when carried in tanks, it unjustly discriminates between shippers, and subjects the traffic to undue prejudice and disadvantage.

Rice, Robinson & Witherop *v.* Western New York & Pennsylvania Railroad Company, 131.

The other issue upon which this case was tried, namely, that an unlawful preference was shown to the Standard Oil Trust and the companies, firms and associations affiliated to the said Standard Oil Trust by the all-rail carriers in making low rates for them and for their benefit to certain California points where there were receiving tank stations erected by the said Standard Oil Trust and its affiliated companies, firms and associations, and then by shipment afterwards from said receiving tank stations to adjacent localities on low rates made for short local hauls in California, whereby an unlawful preference was shown to said trust and its affiliated firms, companies and associations, is not sustained by the evidence in this proceeding.

Rice *v.* Atchison, Topeka & Santa Fe Railroad Company *et al.*, 228.

8. PIG IRON. LOCALITIES.—Pig iron is one of the lowest classes of freight, and the rates on that article complained of in this proceeding are not found to be unjust and unreasonable either in themselves, or relatively, as charged petitioner compared with rates from Youngstown and Cleveland, Ohio.

Poughkeepsie Iron Company *v.* New York Central & Hudson River Railroad Company *et al.*, 195.

9. STEAMBOAT LINES. THROUGH BILLING AND THROUGH RATES.

Capehart *et al. v.* Louisville & Nashville Railroad Company *et al.*, 265.

10. SURGICAL CHAIRS.—The mere fact that one article is of more general use and therefore shipped in greater quantities than another, when each as a rule is shipped in less than carload quantities, and of no considerable difference in bulk, weight and value, and of no appreciable difference in expense of handling and of haul, constitutes in itself no reason why the first should receive a lower rate than the last. In such a case mere quantity, not measured by any recognized unit of quantity adapted to carriage, and lessening the expense of handling and carriage, cannot be allowed to affect rates in the transportation of property.

Harvard & Company *v.* Pennsylvania Company *et al.*, 212.

11. CORN AND CORN PRODUCTS.—After re-hearing and reduction by defendants of differential by lowering rate on corn products, the former order was vacated.

Bates *v.* Pennsylvania Railroad Company *et al.*, 281.

12. ANTHRACITE AND BITUMINOUS COAL.—Proportionately lower rates for longer hauls. Two roads by agreement carried bituminous coal from the Snow Shoe region in Pennsylvania to Perth Amboy, N. J., a distance of about 300 miles, at a higher aggregate, but lower proportionate, rate than was charged by one road on anthracite for the distance over its line, the distance over such line being about 150 miles. *Held*, that this was no undue preference in favor of the bituminous coal traffic, and subjected anthracite traffic to no unreasonable disadvantage, except as the anthracite charges might be excessive.

Coxe Brothers & Company *v.* Lehigh Valley Railroad Company, 535.

13. GROUP RATES.—It is often impracticable to establish different rates on the same commodity from practically the same locality to the same market, and the owners of mines in the Lehigh anthracite region are subjected to no unreasonable disadvantage from the present grouping of mines based on more than actual distance when shipping east and less than actual distance when shipping west.—*Ib.*

14. COMPETITIVE COMMODITIES. LOCALITIES.—The provision of the third section of the Act to regulate commerce prohibiting carriers from making or giving any undue or unreasonable preference or advantage to any particular person, firm, company, corporation or locality, or any particular description of traffic, in any respect whatsoever, not only applies to relative rates on one description of traffic shipped to or from competing localities, but also to relative rates on differently described articles which are competitive in the same markets; and when carriers have established rates on articles of competitive traffic which are relatively reasonable and fair, they cannot arbitrarily select particular articles of such traffic and materially raise or lower rates so established thereon without violating that provision of the statute.

Squire & Company *v.* Michigan Central Railroad Company *et al.*, 611.

15. BY PAYMENT OF REBATES THROUGH EXCESSIVE CAR MILEAGE AND YARDAGE CHARGES.—A firm of cattle dealers in the City of New York, who procured their cattle on a large scale from Chicago and other western points for domestice consumption as well as for export, make an arrangement with two interstate rail carriers constituting a through line from Chicago to New York that the said firm will, under the name of an express company of their own creation, furnish not less than 200 or more than 400 improved live-stock cars for the transportation of these cattle. For the rental of these improved stock cars the carriers pay this express company ¾ of a cent per mile, whether loaded or empty. Extraordinary facilities and rights of way are given these cars to enable them to make a large mileage, and they make more than twice the mileage of

ordinary stock cars. Besides this, the carriers pay 50 cents for the loading of each of said cars with cattle at the Union Stock Yards in Chicago, for which no charge is made against the express company or the firm represented by it. In addition to this, the carriers pay this firm yardage at the rate of 3½ cents per hundred pounds on all their cattle, and upon all other cattle hauled for other firms in the care of this firm, owning the express company, to its yards at pier 45, East River. This yardage charge is thus paid to the said firm by the said carriers for keeping their cattle in the firm's own yards after delivery of them to the firm, and then this yardage charge is deducted from the tariff rate charged by the carrier. The amount of these rebates to this firm in rates on these cattle by these carriers more than pays the entire cost of the improved stock cars within two years after operations are commenced with them, including the expenses of operation, leaving said firm owning the cars and still operating them with all these advantages and rates and facilities. *Held*—

1. This is an unlawful preference to the firm owning these improved stock cars and a violation of the Act to regulate commerce.

2. It is an unlawful and unjust prejudice to other cattle firms and dealers in New York who are competitors in the business of said firm owning said improved stock cars.

Shamberg *v.* Delaware, Lackawanna & Western Railroad Company *et al.*, 630.

16. Same Rate for Longer and Shorter Distances.—The "blanket rate," as it is called, by which the same rate is charged by the all-rail lines from the City of New York, and from all points in the oil producing regions in the States of Pennsylvania, Ohio and West Virginia, and from all the territory in the United States east of the 97th meridian of longitude, in the carriage of petroleum and its products to San Francisco, Oakland, Sacramento, Stockton, Marysville, San Jose, Los Angeles and San Diego, in the State of California, is a rate that has its origin in and is based upon actual competition for the carriage of this large traffic, on the one side, by the all-rail lines, and on the other side, by the lines part rail and part water, and also, in some instances, all-water lines, and also in other instances, part pipe lines and part water lines; and it is a rate of which petitioner has no right to complain as being a violation of the fourth section of the Act to regulate commerce, because it does not appear from the evidence that it is a violation of that section.

Rice *v.* Atchison, Topeka & Santa Fe Railroad Company *et al.*, 228.

Ordinarily longer distances warrant higher charges, but carriers may lawfully accept the same aggregate, though less profitable, rates for longer distances, provided such carriers do not "subject any particular person, company, firm, corporation or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage."

James & Mayer Buggy Company *v.* Cincinnati, New Orleans & Texas Pacific Railway Company *et al.*, 744.

17. Foreign and Domestic Traffic.

New York Board of Trade and Transportation *et al. v.* Pennsylvania Railroad Company *et al.*, 447.

18. Food Products.

In re Alleged Excessive Freight Rates and Charges on Food Products, 48.

See Reasonable Rates; Relative Rates; Unjust Discrimination; Long and Short Haul Clause.

PREJUDICE AND DISADVANTAGE.

Proctor & Gamble *v.* Cincinnati, Hamilton & Dayton Railroad Company *et al.*, 87.

See PREFERENCE OR ADVANTAGE.

PRESUMPTION.

FILING OF SCHEDULES RAISES NO PRESUMPTION AS TO THE LEGALITY OF RATES.

San Bernardino Board of Trade *v.* Atchison, Topeka & Santa Fe Railroad Company *et al.*, 104.

PROCEEDING.

1. REDUCTION OF RATE DURING PENDENCY.

Bates *v.* Pennsylvania Railroad Company *et al.*, 281.

2. BEFORE COMMISSION.

In re Alleged Excessive Freight Rates and Charges on Food Products, 116.

McMillan & Company *v.* Western Classification Committee, 276.

3. IN UNITED STATES COURTS.—*Ib.*

4. INSTITUTED BY MERCANTILE SOCIETY.

Boston Fruit and Produce Exchange *v.* New York & New England Railroad Company *et al.*, 664.

See COMPLAINANT; CONCESSION OF RELIEF.

PRODUCERS.

Warner *v.* New York Central & Hudson River Railroad Company, 32.

In re Alleged Excessive Freight Rates and Charges on Food Products, 48.

Delaware State Grange etc. *v.* New York, Philadelphia & Norfolk Railroad Company *et al.*, 588.

See REASONABLE RATES.

PROOF.

See EVIDENCE; BURDEN OF PROOF.

PUBLIC INTEREST.

Lehmann, Higginson & Company *v.* Southern Pacific Company *et al.*, 1.

In re Alleged Excessive Freight Rates and Charges on Food Products, 48.

Manufacturers' and Jobbers' Union of Mankato *v.* Minneapolis & St. Louis Railway Company *et al.*, 79.

Rice, Robinson & Witherop *v.* Western New York & Pennsylvania Railroad Company, 131.

Board of Trade of the City of Chicago *v.* Chicago & Alton Railroad Company *et al.*, 158.

McMillan & Company *v.* Western Classification Committee, 276.

Kauffman Milling Company *v.* Missouri Pacific Railway Company *et al.*, 417.

Delaware State Grange etc. *v.* New York, Philadelphia & Norfolk Railroad Company *et al.*, 588.

Shamberg *v.* Delaware, Lackawanna & Western Railroad Company *et al.*, 630.

New York & Northern Railway Company *v.* New York & New England Railroad Company *et al.*, 702.

RAILROAD COMPANY.

1. FINANCIAL OBLIGATIONS.

In re Alleged Excessive Freight Rates and Charges on Food Products, 48.

2. ACCOUNTS OF WHEN ALSO A MINER AND SHIPPER OF COAL.

Haddock *v.* Delaware, Lackawanna & Western Railroad Company, 296.

3. OWNER OF CAPITAL STOCK OF COAL COMPANY.

Coxe Brothers & Company *v.* Lehigh Valley Railroad Company, 535.

4. SOLVENCY.

New York & Northern Railway Company *v.* New York & New England Railroad Company *et al.*, 702.

See CARRIERS; REASONABLE RATES, 6.

RAILROAD REGULATION.

1. IN THE STATES.

Report of Interstate Commerce Commission, 386.

2. IN FOREIGN COUNTRIES.

Report of Interstate Commerce Commission, 387.

See INTERSTATE COMMERCE; INTERSTATE COMMERCE COMMISSION.

RAILROADS.

1. CHARACTER OF, WHEN CONSIDERED.

Lehmann, Higginson & Company *v.* Southern Pacific Company *et al.*, 1.

2. CONSOLIDATION OF COMPETING.

Rice, Robinson & Witherop *v.* Western New York & Pennsylvania Railroad Company, 131.

Report of Interstate Commerce Commission, 409.

See CARRIERS.

RATE MAKING.

COMBINATION RATES NOT SHOWN ON TARIFFS.

The theory of a combination rate made up of a through rate to some point and the local back to another point on the same line, without showing the straight rate on the schedules, although popular with carriers, is an anomaly in rate making. A straight rate to every point on a line and duly shown on the tariff sheets, is undoubtedly the only correct method.

Lehmann, Higginson & Company *v.* Southern Pacific Company *et al.*, 27.

See RATES; TARIFFS.

RATES.

1. COMBINATION.

Lehmann, Higginson & Company *v.* Southern Pacific Company *et al.*, 1.

Hamilton & Brown *v.* Chattanooga, Rome & Columbus Railroad Company *et al.*, 686.

James & Mayer Buggy Company *v.* Cincinnati, New Orleans & Texas Pacific Railway Company *et al.*, 744.

2. STRAIGHT.—*Ib.*

3. SUGAR.
Lehmann, Higginson & Company *v.* Southern Pacific Company *et al.*, 1.

4. PATENT MEDICINES.
Warner *v.* New York Central & Hudson River Railroad Company *et al.*, 32.

5. SOAP.
Andrews Soap Company *v.* Pittsburgh, Cincinnati & St. Louis Railway Company *et al.*, 41.
Proctor & Gamble *v.* Cincinnati, Hamilton & Dayton Railroad Company *et al.*, 87.
Beaver & Company *v.* Pittsburgh, Cincinnati & St. Louis Railway Company *et al.*, 733.

6. FOOD PRODUCTS.
In re Alleged Excessive Freight Rates and Charges on Food Products, 48, 116.

7. PETROLEUM AND ITS PRODUCTS.
Rice, Robinson & Witherop *v.* Western New York & Pennsylvania Railroad Company, 131.
Rice *v.* Atchison, Topeka & Santa Fe Railroad Company *et al.*, 228.

8. BLANKET.
Rice *v.* Atchison, Topeka & Santa Fe Railroad Company *et al.*, 228.

9. HOGS AND HOG PRODUCT.
Board of Trade of the City of Chicago *v.* Chicago & Alton Railroad Company *et al.*, 158.
Squire & Company *v.* Michigan Central Railroad Company *et al.*, 611.

10. PIG IRON.
Poughkeepsie Iron Company *v.* New York Central & Hudson River Railroad Company *et al.*, 195.

11. SURGICAL CHAIRS.
Harvard Company *v.* Pennsylvania Company *et al.*, 212.

12. COAL.
Haddock *v.* Delaware, Lackawanna & Western Railroad Company, 296.
Coxe Brothers & Company *v.* Lehigh Valley Railroad Company, 585.

13. GROUP.
Coxe Brothers & Company *v.* Lehigh Valley Railroad Company, 585.

14. WHEAT AND FLOUR.
Kauffman Milling Company *v.* Missouri Pacific Railway Company *et al.*, 417.

15. IMPORT TRAFFIC.
New York Board of Trade and Transportation *et al. v.* Pennsylvania Railroad Company *et al.*, 447.

16. CATTLE AND DRESSED BEEF.
Squire & Company *v.* Michigan Central Railroad Company *et al.*, 611.

17. PEACHES.
Delaware State Grange etc. *v.* New York, Philadelphia & Norfolk Railroad Company *et al.*, 588.
Boston Fruit and Produce Exchange *v.* New York & New England Railroad Company *et al.*, 664.

18. PERISHABLE FREIGHT.—*Ib.*

19. COTTON.

New Orleans Cotton Exchange *v.* Louisville, New Orleans & Texas Railway Company, 694.

20. VEHICLES.

James & Mayer Buggy Company *v.* Cincinnati, New Orleans & Texas Pacific Railway Company *et al.*, 744.

21. RATE WARS AND RATE CUTTING.

Report of Interstate Commerce Commission, 351.

See THROUGH RATES; LOCAL RATES; THROUGH AND LOCAL RATES; RE-HEARING; THROUGH ROUTES AND THROUGH RATES; UNJUST DISCRIMINATION; REASONABLE RATES; PREFERENCE OR ADVANTAGE; RELATIVE RATES; MILEAGE RATES; CARRIERS; TARIFFS; TRAFFIC.

RATE SHEETS.

See TARIFFS.

REASONABLE RATES.

1. TO SMALL TOWN.—When a reduced rate is made at the terminus of a through route under the compulsion of competition, a town not on the through route but reached over a connecting road has a disadvantage of location entailing some additional expense, and a reasonably higher rate to such town than the forced competitive rate is not unlawful.

Lehmann, Higginson & Company *v.* Southern Pacific Company *et al.*, 1.

2. PATENT MEDICINES.—Patent medicines manufactured and shipped by the complainant are rated in the Official Classification as first class for less than carloads and third class for carloads. Ale, beer and mineral water are rated as third class in less than carloads and fifth class in carloads. The market value of the medicines is three times or more higher than that of the other articles named and the quantity transported much less. Upon complaint made that the patent medicines should be classified the same as ale, beer and mineral water:

Held, that in view of the much higher market value of the medicines and the smaller volume of traffic they supply a higher classification than for the other articles named, in which there is much greater competition among shippers, is not unreasonable, and the classification at present in force is not shown to be unjust.

Warner *v.* New York Central & Hudson River Railroad Company *et al.*, 32.

3. SOAP.—On complaint of unjust classification of soap advertised and sold as toilet soap, but claimed not superior to certain laundry soaps transported at a lower rate. *Held*, that the manufacturers' description of the soap to the public warrants its classification accordingly.

Andrews Soap Company *v.* Pittsburgh, Cincinnati & St. Louis Railway Company *et al.*, 41.

The complainants are large manufacturers of common soap at Cincinnati, Ohio. In the Official Classification common soap stands in the fifth class in carload lots. The defendant railroad companies have always given it the rate of fifth-class articles, but for many years prior to May, 1889, they charged the complainants for only net weight, the gross weight being one-sixth more than net weight, but since said date they have charged for gross weight without diminishing the rate per hundred pounds. The effect of this was to charge one-sixth more for the same service than had before been charged. The charge for transportation under the net-weight practice was reasonable and just, and without complaint on the part of shippers or carriers. *Held*, that the

increased charge by the device of charging for the gross weight, being one-sixth advance for the same service, was unwarranted, as it operated to make the rate unreasonable.

Proctor & Gamble *v.* Cincinnati, Hamilton & Dayton Railroad Company *et al.*, 87.

4. MUST NOT BE SO LOW AS TO IMPOSE A BURDEN ON OTHER TRAFFIC.

Lehmann, Higginson & Company *v.* Southern Pacific Company *et al.*, 1.
In re Alleged Excessive Freight Rates and Charges on Food Products, 48.

5. FOOD PRODUCTS.—Transportation charges now made on corn and oats between the Mississippi River and eastern cities, based on twenty cents per hundred pounds from Chicago, and twenty-three cents from East St. Louis, to New York City, are less than 4 4-10 mills per ton per mile and are not excessive.

In re Alleged Excessive Freight Rates and Charges on Food Products, 48.

The charge of twenty cents on the hundred pounds of corn and oats from the Missouri River to Chicago, and five cents less to the Mississippi River, is excessive, and to be reasonable should not exceed seventeen cents to Chicago and twelve to the Mississippi River, east side.—*Ib.*

The rates on corn and oats in force from stations in Kansas and Nebraska to the Mississippi River, east side, and to Chicago, are two cents in excess of reasonable rates.—*Ib.*

Any transportation charges between the Mississippi River and New York City on wheat and flour based on a higher rate than twenty-three cents per hundred pounds from Chicago to New York City are unreasonable, and any rate on wheat and flour carried from any one place to another which is more than fifteen per cent. above the rate on corn and oats between the same places is unreasonable.—*Ib.*

The rates of forty-six cents per hundred pounds on grain and fifty-one cents on flour and meal between the grain region in Kansas and a large district in Texas are the same for distances shorter than two hundred and fifty and longer than eight hundred miles and are unreasonably high for the longer and grossly excessive and extortionate for the shorter distances.—*Ib.*

6. CONSIDERATIONS WHICH AFFECT THE QUESTION.—In fixing reasonable rates the requirements of operating expenses, bonded debt, fixed charges and dividend on capital stock from the total traffic are all to be considered, but the claim that any particular rate is to be measured by these as a fixed standard, below which the rate may not lawfully be reduced, is one rightly subject to some qualifications, one of which is the obligations must be actual and in good faith.—*Ib.*

The generally recognized principle that cost of carriage is in inverse ratio to distance, and that therefore the charge per ton per mile should diminish with distance, is not a rule required by the statute, and is subject to qualifications and exceptions.

Manufacturers' and Jobbers' Union of Mankato *v.* Minneapolis & St. Louis Railway Company *et al.*, 79.

7. FOOD PRODUCTS.—When investigation concerning reasonableness of rates on food products was conducted in substantial compliance with the statute.

In re Alleged Excessive Freight Rates and Charges on Food Products, 116.

8. DUTY OF COMMISSION TO ENFORCE PROVISIONS OF ACT CONCERNING.

The Act to regulate commerce makes it the duty of the Interstate Commerce Commission to execute and enforce the provisions of the Act which require rates and charges to be reasonable.—*Ib.*

9. RELATION TO COST OF PRODUCTION AND VALUE OF THE SERVICE.

The rate of compensation which railroad companies may lawfully receive for transportation services cannot be so limited that the shipper may in all cases realize actual cost of production.

In re Alleged Excessive Freight Rates and Charges on Food Products, 48.

Charges for transportation service should have reasonable relation to cost of production and to the value of the service to the producer and shipper, but should not be so low on any as to impose a burden on other traffic.—*Ib.*

But the higher rate for a special service should bear a just relation to the value of the service to the traffic, and is not wholly in the discretion of the carrier. While a carrier should be fully compensated, the public interests require that the traffic should not be rendered valueless to the producer, if the charges of the carrier have such an effect and can be reasonably reduced.

Delaware State Grange etc. *v.* New York, Philadelphia & Norfolk Railroad Company *et al.*, 588.

10. RATES LONG CONTINUED PRESUMED PROFITABLE.—In the carriage of great staples, which supply an enormous business and which in market value and actual cost of transportation are among the cheapest articles of commerce, rates yielding only moderate profit to the carrier are both necessary and justifiable, and where the carriers frequently put in force and continue for considerable periods of time tariffs of rates and charges, it is a fair inference that such rates and charges are profitable.

In re Alleged Excessive Freight Rates and Charges on Food Products, 48.

A railroad company by putting in force a rate of charges furnishes evidence that the rate is profitable, which is more convincing when such rate is long maintained; and where a carrier put in force and maintained for nearly two years immediately after the Act to regulate commerce took effect, a scale of charges largely in excess of that maintained for two years next before the Act, and the lower rates were sufficient to meet all the obligations of the road, including income on investment—*Held*, The higher rate should be reduced.

Coxe Brothers & Company *v.* Lehigh Valley Railroad Company, 535.

11. NOT NECESSARILY PROPORTIONATE TO DISTANCE.—The doctrine that an estimated proportion of the through rate must not be less than the local rate from an intermediate point to another point named on the line covered by the through rate, has often been held by the Commission to be untenable.

Poughkeepsie Iron Company *v.* New York Central & Hudson River Railroad Company *et al.*, 195.

Besides terminal expenses and other aggregate charges not dependent upon the distance freight is moved, there are other conditions which justify a lower proportionate charge for longer distances.

Coxe Brothers & Company *v.* Lehigh Valley Railroad Company, 535.

12. PRESUMPTION.—The filing of schedules raises no presumption as to the legality of the rates, and no omission or failure to challenge or disapprove the schedules so filed can have the effect of making rates lawful which are unreasonable.

San Bernardino Board of Trade *v.* Atchison, Topeka & Santa Fe Railroad Company *et al.*, 104.

13. PIG IRON.—On complaint of unreasonable rates on pig iron from Poughkeepsie, N. Y., to points in Massachusetts, it was held that rates charged to petitioner are the same in substance as rates charged other

manufacturers of pig iron at producing furnaces in the State of New York, and are in themselves as well as relatively, just and reasonable.

Poughkeepsie Iron Company *v.* New York Central & Hudson River Railroad Company *et al.*, 195.

14. SURGICAL CHAIRS.—Surgical chairs compared with other freight, and reasons stated as to what the rates on them should be as articles of commerce in course of transportation.

Harvard Company *v.* Pennsylvania Company *et al.*, 212.

15. PETROLEUM AND ITS PRODUCTS.—No question is presented in this case as to whether the rates charged by the all-rail carriers at intermediate points are just and reasonable or not, but, on the contrary, the case was so presented and tried as to distinctly indicate to the Commission that no decision was desired in regard to this matter, for no evidence was offered concerning it by either side; and the case being one that is *inter partes* commenced, prosecuted and defended by able counsel for the respective parties, the Commission has heard, considered and determined it as presented by the parties and their counsel.

Rice *v.* Atchison, Topeka & Santa Fe Railroad Company *et al.*, 228.

16. CHARGE MADE BY ADDING LOCAL RATES.—Flour.

According to the evidence, the cost of serving is far less expensive to the carriers in doing the through business than in doing separately, each for itself, the combined local business of the two railroad companies. It does not appear that the through rate to Boston is unreasonably low; nor does it appear upon the evidence in this proceeding that the local rates of these two railroad companies are unjust and unreasonable.

King & Company *v.* New York, New Haven & Hartford Railroad Company *et al.*, 251.

17. CONTRACTS BETWEEN THE PARTIES MADE PRIOR TO THE ACT.—Coal.

That complainant is precluded, by the terms of the contract for shipping coal to Hoboken, from going into evidence to show that the rate on his coal to Hoboken ought to be different from that fixed by the contract; and witnesses and evidence asked for to that end are immaterial.

Haddock *v.* Delaware, Lackawanna & Western Railroad Company, 296.

The contracts providing that complainant may ship coal to points north and west, on the same terms and rates that respondent for the the time being gives other persons, do not preclude complainant from showing that such rates are unjust, oppressive or unreasonable. Complainant is therefore entitled to hearing upon that question.—*Ib.*

The respondent's motion to dismiss the complaint *in toto* is denied, as good ground of complaint is set forth in respect to northern and western shipments.—*Ib.*

18. DISCUSSION ON THE SUBJECT.

Report of Interstate Commerce Commission, 358.

19. FOREIGN AND DOMESTIC TRAFFIC.

New York Board of Trade and Transportation *et al. v.* Pennsylvania Railroad Company *et al.*, 447.

20. COMMISSION TO DETERMINE.—The Act to regulate commerce declares every unreasonable charge unlawful, requires the Commission to enforce its provisions and confers the power, and imposes on the Commission the duty of determining what are reasonable rates as well as what are unreasonable.

Coxe Brothers & Company *v.* Lehigh Valley Railroad Company, 535.

21. REMOVAL OF UNJUST DISCRIMINATION BY CORRECTION OF UNREASONABLE RATES.—*Ib.*

22. COMMERCIAL CONSIDERATIONS—RIGHTS OF PRODUCERS.

The requirement of the statute that all rates shall be reasonable and just involves a consideration of the commercial value of the traffic, and implies that rates should be so adjusted that producers of traffic as well as carriers may carry on their pursuits successfully, if practicable for both and without injustice to the carrier. The public good requires what is plainly the spirit of the law, that the transportation interests are not alone to be considered, but that in the just exercise of regulation care should be taken that the lawful and necessary occupations of citizens are not unjustly burdened.

Delaware State Grange etc. *v.* New York, Philadelphia & Norfolk Railroad Company *et al.*, 588.

23. PERISHABLE FREIGHT—SPECIAL TRAIN SERVICE AND CAR EQUIPMENT.

The complaint was that the defendants' charges for the transportation of specified perishable articles of truck-farming from stations on their lines of railroad to Jersey City and Philadelphia were excessive and unreasonable, and that the charges were higher for the shorter distances from their stations on the Peninsula in Delaware and Maryland than for the longer distance from Norfolk, Virginia. It was found that the charges on certain articles specified from stations on the Peninsula were excessive, and a reduction was ordered. —*Ib.*

For a special service by a carrier, such as the transportation of perishable freight, requiring quick movement, prompt delivery at destination, special fitting up of cars, their withdrawal from other service, and their return empty on fast time, all involving greater expense to the carrier, a higher rate than for the carriage of ordinary freight is warranted by the conditions of the service and is reasonable and just.—*Ib.*

Elements that will be considered in fixing the rates for the transportation of perishable fruit, under special circumstances, discussed and applied to the facts found.

Boston Fruit and Produce Exchange *v.* New York & New England Railroad Company *et al.*, 664.

The gist of the present complaint is that the rate on peaches from the Delaware district to Boston is unreasonably high and oppressive, and, the fact being so found, a reduction is ordered.—*Ib.*

See RELATIVE RATES; PREFERENCE OR ADVANTAGE; UNJUST DISCRIMINATION; CARRIERS; CLASSIFICATION; LONG AND SHORT HAUL CLAUSE; MILEAGE RATES; THROUGH AND LOCAL RATES.

REBATES.

FROM RATES ON LIVE CATTLE.

Shamberg *v.* Delaware, Lackawanna & Western Railroad Company *et al.*, 630.

See PREFERENCE OR ADVANTAGE, 15.

RE-HEARING.

1. FORMER ORDER VACATED.

Bates *v.* Pennsylvania Railroad Company *et al.*, 281.

2. PETITION.—Must be supported by proof showing *prima facie* at least that there was error in the findings of fact.

Proctor & Gamble *v.* Cincinnati, Hamilton & Dayton Railroad Company *et al.*, 443.

RELATIVE RATES.

1. To Competitive and Local Points.—Rates cannot be arbitrarily charged in the mere discretion of a carrier. They are to be equitably adjusted with regard to the public interests as well as the carrier's. Reduced rates at points where competitive influences are controlling must not fall below some revenue from the traffic in excess of cost, and higher rates at other points, required for the necessary revenue of a carrier, must be reasonable in themselves, and also relatively reasonable in comparison with the competitive rate.

Lehmann, Higginson & Company *v.* Southern Pacific Company *et al.*, 1.

The addition of through rate to basing point and that local rate which will give the lowest combination criticised.

Hamilton & Brown *v.* Chattanooga, Rome & Columbus Railroad Company *et al.*, 686.

2. Manufacturers' Description.—The market value of articles and shippers representations to the public as to their character may be taken into account in classification. This is especially applicable to articles in which there is no free competition among producers and shippers. The volume of the traffic is an element that may also be considered in classification.

Warner *v.* New York Central & Hudson River Railroad Company *et al.*, 32.

In a proceeding brought to correct classification of a soap manufactured and sold as toilet soap, but claimed not substantially superior to other soaps sold as laundry soap and carried at lower rates, the manufacturers' description of his product for commercial purposes as being of superior value was held to warrant its classification accordingly.

Andrews Soap Company *v.* Pittsburgh, Cincinnati & St. Louis Railway Company *et al.*, 41.

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3. Food Products.

In re Alleged Excessive Freight Rates and Charges on Food Products, 116.

4. Between Localities.—Equality in charges is required under circumstances and conditions substantially similar, and relative equality is necessary in the degree of similarity.

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Upon complaint by dealers at Mankato, Minn., that rates from Chicago to Mankato should be no higher than to Waterville, Minneapolis and points allowed like rates.

Held, that in view of the circumstances and conditions existing, a somewhat higher charge to Mankato is not unlawful, but that a difference of twenty per cent. or more on the respective classes, charged when the complaint was filed, is excessive, and that a difference of ten per cent. on the several classes is reasonable and should not be exceeded.—*Ib.*

5. Pig Iron from different Mills.—Rates charged petitioner by the defendants on pig iron are in themselves, as well as relatively, the same in substance as rates charged other manufacturers of pig iron at the producing furnaces in the State of New York.

Poughkeepsie Iron Company *v.* New York Central & Hudson River Railroad Company *et al.*, 195.

The cost of the production of pig iron at a furnace situated like that of petitioner on the Hudson River in the State of New York is much greater than at Youngstown, Ohio, or Birmingham, Alabama, or at other points in the west and south; and while the aggregate rate charged petitioner to New England mills is a great deal lower than the aggregate rate charged on these western and southern irons to the same mills, yet it is not sufficiently so to overcome the difference in the cost of production; and the consequence is that petitioner finds itself at a serious disadvantage in competing with these western and southern irons in the markets and mills of the New England States where there is a very great demand for this class of property.—*Ib.*

The Commission has no power and authority in this proceeding to order other carriers not parties to this proceeding to raise their rates on pig iron transported from Youngstown and Cleveland, Ohio, to New England points in order to overcome the difference in the cost of production of pig iron now existing against petitioner; nor would the Commission enter upon the consideration of any such subject in a proceeding to which such carriers were not parties and in which such localities sought to be burdened with higher rates, for example, Youngstown and Cleveland, Ohio, had no opportunity to be heard; and the findings of fact in the present proceeding, which show that the rates already charged petitioner by the defendants are in themselves, as well as relatively, just and reasonable rates, demonstrate that the Commission could not order the defendants to lower these rates from Poughkeepsie to all points on the Boston & Albany road one-half, and Holyoke nearly one-half, in order to overcome the difference in the cost of production of pig iron now existing against petitioner.—*Ib.*

6. COMPETITIVE ARTICLES.—HOGS AND HOG PRODUCT. As articles of commerce the live hog and its product are in direct competition with each other at the points named in this proceeding and in the chief markets of the country, and are entitled to rates not only reasonable and just in themselves, but relatively reasonable and just in their bearing upon these different localities.

Board of Trade of the City of Chicago *v.* Chicago & Alton Railroad Company *et al.*, 158.

7. ON COMPETITIVE ARTICLES SHOULD BE ADJUSTED WITH REFERENCE TO COST OF SERVICE. HOGS AND HOG PRODUCT.—The relation of rates ought to rest upon fixed and stable conditions. The fluctuations of markets are so frequent, especially as to competitive articles, and oftentimes unexpected, that commercial considerations alone would not furnish a sufficiently stable and fixed rule for guidance in making a rate that should remain substantially permanent through all fluctuations. The Commission does not, by a fixing of rates, attempt to overcome advantages which one producer or dealer may have in his geographical location, and to produce equality between competitors in all markets. It would be a useless task, even if it had the power, to attempt to accomplish such a result. The proper relation of rates for transportation of strictly competitive articles over the same line should be determined by reference to respective costs of service ascertained with reasonable accuracy.

Squire & Company *v.* Michigan Central Railroad Company *et al.*, 611.

Violation by one carrier of principles laid down in this case as governing relative rates on competitive articles does not justify similar violations by its competitors.—*Ib.*

The rates involved in this case are those on live hogs, live cattle and the dressed products of each. These are found to be competitive commodities and therefore entitled to relatively reasonable rates for transportation proportioned to each other according to the respective costs of service.—*Ib.*

PREJUDICE AND DISADVANTAGE.

Proctor & Gamble *v.* Cincinnati, Hamilton & Dayton Railroad Company *et al.*, 87.

See PREFERENCE OR ADVANTAGE.

PRESUMPTION.

FILING OF SCHEDULES RAISES NO PRESUMPTION AS TO THE LEGALITY OF RATES.

San Bernardino Board of Trade *v.* Atchison, Topeka & Santa Fe Railroad Company *et al.*, 104.

PROCEEDING.

1. REDUCTION OF RATE DURING PENDENCY.

Bates *v.* Pennsylvania Railroad Company *et al.*, 281.

2. BEFORE COMMISSION.

In re Alleged Excessive Freight Rates and Charges on Food Products, 116.

McMillan & Company *v.* Western Classification Committee, 276.

3. IN UNITED STATES COURTS.—*Ib.*

4. INSTITUTED BY MERCANTILE SOCIETY.

Boston Fruit and Produce Exchange *v.* New York & New England Railroad Company *et al.*, 664.

See COMPLAINANT; CONCESSION OF RELIEF.

PRODUCERS.

Warner *v.* New York Central & Hudson River Railroad Company, 32.

In re Alleged Excessive Freight Rates and Charges on Food Products, 48.

Delaware State Grange etc. *v.* New York, Philadelphia & Norfolk Railroad Company *et al.*, 588.

See REASONABLE RATES.

PROOF.

See EVIDENCE; BURDEN OF PROOF.

PUBLIC INTEREST.

Lehmann, Higginson & Company *v.* Southern Pacific Company *et al.*, 1.

In re Alleged Excessive Freight Rates and Charges on Food Products, 48.

Manufacturers' and Jobbers' Union of Mankato *v.* Minneapolis & St. Louis Railway Company *et al.*, 79.

Rice, Robinson & Witherop *v.* Western New York & Pennsylvania Railroad Company, 131.

Board of Trade of the City of Chicago *v.* Chicago & Alton Railroad Company *et al.*, 158.

McMillan & Company *v.* Western Classification Committee, 276.

Kauffman Milling Company *v.* Missouri Pacific Railway Company *et al.*, 417.

Delaware State Grange etc. *v.* New York, Philadelphia & Norfolk Railroad Company *et al.*, 588.

Shamberg *v.* Delaware, Lackawanna & Western Railroad Company *et al.*, 630.

New York & Northern Railway Company *v.* New York & New England Railroad Company *et al.*, 702.

RAILROAD COMPANY.

1. FINANCIAL OBLIGATIONS.

In re Alleged Excessive Freight Rates and Charges on Food Products, 48.

2. ACCOUNTS OF WHEN ALSO A MINER AND SHIPPER OF COAL.

Haddock *v.* Delaware, Lackawanna & Western Railroad Company, 296.

3. OWNER OF CAPITAL STOCK OF COAL COMPANY.

Coxe Brothers & Company *v.* Lehigh Valley Railroad Company, 535.

4. SOLVENCY.

New York & Northern Railway Company *v.* New York & New England Railroad Company *et al.*, 702.

See CARRIERS; REASONABLE RATES, 6.

RAILROAD REGULATION.

1. IN THE STATES.

Report of Interstate Commerce Commission, 386.

2. IN FOREIGN COUNTRIES.

Report of Interstate Commerce Commission, 387.

See INTERSTATE COMMERCE; INTERSTATE COMMERCE COMMISSION.

RAILROADS.

1. CHARACTER OF, WHEN CONSIDERED.

Lehmann, Higginson & Company *v.* Southern Pacific Company *et al.*, 1.

2. CONSOLIDATION OF COMPETING.

Rice, Robinson & Witherop *v.* Western New York & Pennsylvania Railroad Company, 131.

Report of Interstate Commerce Commission, 409.

See CARRIERS.

RATE MAKING.

COMBINATION RATES NOT SHOWN ON TARIFFS.

The theory of a combination rate made up of a through rate to some point and the local back to another point on the same line, without showing the straight rate on the schedules, although popular with carriers, is an anomaly in rate making. A straight rate to every point on a line and duly shown on the tariff sheets, is undoubtedly the only correct method.

Lehmann, Higginson & Company *v.* Southern Pacific Company *et al.*, 27.

See RATES; TARIFFS.

RATES.

1. COMBINATION.

Lehmann, Higginson & Company *v.* Southern Pacific Company *et al.*, 1.

Hamilton & Brown *v.* Chattanooga, Rome & Columbus Railroad Company *et al.*, 686.

James & Mayer Buggy Company *v.* Cincinnati, New Orleans & Texas Pacific Railway Company *et al.*, 744.

2. STRAIGHT.—*Ib.*

3. Sugar.
Lehmann, Higginson & Company *v.* Southern Pacific Company *et al.*, 1.

4. Patent Medicines.
Warner *v.* New York Central & Hudson River Railroad Company *et al.*, 32.

5. Soap.
Andrews Soap Company *v.* Pittsburgh, Cincinnati & St. Louis Railway Company *et al.*, 41.
Proctor & Gamble *v.* Cincinnati, Hamilton & Dayton Railroad Company *et al.*, 87.
Beaver & Company *v.* Pittsburgh, Cincinnati & St. Louis Railway Company *et al.*, 733.

6. Food Products.
In re Alleged Excessive Freight Rates and Charges on Food Products, 48, 116.

7. Petroleum and its Products.
Rice, Robinson & Witherop *v.* Western New York & Pennsylvania Railroad Company, 131.
Rice *v.* Atchison, Topeka & Santa Fe Railroad Company *et al.*, 228.

8. Blanket.
Rice *v.* Atchison, Topeka & Santa Fe Railroad Company *et al.*, 228.

9. Hogs and Hog Product.
Board of Trade of the City of Chicago *v.* Chicago & Alton Railroad Company *et al.*, 158.
Squire & Company *v.* Michigan Central Railroad Company *et al.*, 611.

10. Pig Iron.
Poughkeepsie Iron Company *v.* New York Central & Hudson River Railroad Company *et al.*, 195.

11. Surgical Chairs.
Harvard Company *v.* Pennsylvania Company *et al.*, 212.

12. Coal.
Haddock *v.* Delaware, Lackawanna & Western Railroad Company, 296.
Coxe Brothers & Company *v.* Lehigh Valley Railroad Company, 535.

13. Grout.
Coxe Brothers & Company *v.* Lehigh Valley Railroad Company, 535.

14. Wheat and Flour.
Kauffman Milling Company *v.* Missouri Pacific Railway Company *et al.*, 417.

15. Import Traffic.
New York Board of Trade and Transportation *et al. v.* Pennsylvania Railroad Company *et al.*, 447.

16. Cattle and Dressed Beef.
Squire & Company *v.* Michigan Central Railroad Company *et al.*, 611.

17. Peaches.
Delaware State Grange etc. *v.* New York, Philadelphia & Norfolk Railroad Company *et al.*, 588.
Boston Fruit and Produce Exchange *v.* New York & New England Railroad Company *et al.*, 664.

18. Perishable Freight.—*Ib.*

19. COTTON.

New Orleans Cotton Exchange *v.* Louisville, New Orleans & Texas Railway Company, 694.

20. VEHICLES.

James & Mayer Buggy Company *v.* Cincinnati, New Orleans & Texas Pacific Railway Company *et al.*, 744.

21. RATE WARS AND RATE CUTTING.

Report of Interstate Commerce Commission, 351.

See THROUGH RATES; LOCAL RATES; THROUGH AND LOCAL RATES; RE-HEARING; THROUGH ROUTES AND THROUGH RATES; UNJUST DISCRIMINATION; REASONABLE RATES; PREFERENCE OR ADVANTAGE; RELATIVE RATES; MILEAGE RATES; CARRIERS; TARIFFS; TRAFFIC.

RATE SHEETS.

See TARIFFS.

REASONABLE RATES.

1. TO SMALL TOWN.—When a reduced rate is made at the terminus of a through route under the compulsion of competition, a town not on the through route but reached over a connecting road has a disadvantage of location entailing some additional expense, and a reasonably higher rate to such town than the forced competitive rate is not unlawful.

Lehmann, Higginson & Company *v.* Southern Pacific Company *et al.*, 1.

2. PATENT MEDICINES.—Patent medicines manufactured and shipped by the complainant are rated in the Official Classification as first class for less than carloads and third class for carloads. Ale, beer and mineral water are rated as third class in less than carloads and fifth class in carloads. The market value of the medicines is three times or more higher than that of the other articles named and the quantity transported much less. Upon complaint made that the patent medicines should be classified the same as ale, beer and mineral water:

Held, that in view of the much higher market value of the medicines and the smaller volume of traffic they supply a higher classification than for the other articles named, in which there is much greater competition among shippers, is not unreasonable, and the classification at present in force is not shown to be unjust.

Warner *v.* New York Central & Hudson River Railroad Company *et al.*, 32.

3. SOAP.—On complaint of unjust classification of soap advertised and sold as toilet soap, but claimed not superior to certain laundry soaps transported at a lower rate. *Held*, that the manufacturers' description of the soap to the public warrants its classification accordingly.

Andrews Soap Company *v.* Pittsburgh, Cincinnati & St. Louis Railway Company *et al.*, 41.

The complainants are large manufacturers of common soap at Cincinnati, Ohio. In the Official Classification common soap stands in the fifth class in carload lots. The defendant railroad companies have always given it the rate of fifth-class articles, but for many years prior to May, 1889, they charged the complainants for only net weight, the gross weight being one-sixth more than net weight, but since said date they have charged for gross weight without diminishing the rate per hundred pounds. The effect of this was to charge one-sixth more for the same service than had before been charged. The charge for transportation under the net-weight practice was reasonable and just, and without complaint on the part of shippers or carriers. *Held*, that the

increased charge by the device of charging for the gross weight, being one-sixth advance for the same service, was unwarranted, as it operated to make the rate unreasonable.

Proctor & Gamble *v.* Cincinnati, Hamilton & Dayton Railroad Company *et al.*, 87.

4. MUST NOT BE SO LOW AS TO IMPOSE A BURDEN ON OTHER TRAFFIC.

Lehmann, Higginson & Company *v.* Southern Pacific Company *et al.*, 1.
In re Alleged Excessive Freight Rates and Charges on Food Products, 48.

5. FOOD PRODUCTS.—Transportation charges now made on corn and oats between the Mississippi River and eastern cities, based on twenty cents per hundred pounds from Chicago, and twenty-three cents from East St. Louis, to New York City, are less than 4 4-10 mills per ton per mile and are not excessive.

In re Alleged Excessive Freight Rates and Charges on Food Products, 48.

The charge of twenty cents on the hundred pounds of corn and oats from the Missouri River to Chicago, and five cents less to the Mississippi River, is excessive, and to be reasonable should not exceed seventeen cents to Chicago and twelve to the Mississippi River, east side.—*Ib.*

The rates on corn and oats in force from stations in Kansas and Nebraska to the Mississippi River, east side, and to Chicago, are two cents in excess of reasonable rates.—*Ib.*

Any transportation charges between the Mississippi River and New York City on wheat and flour based on a higher rate than twenty-three cents per hundred pounds from Chicago to New York City are unreasonable, and any rate on wheat and flour carried from any one place to another which is more than fifteen per cent. above the rate on corn and oats between the same places is unreasonable.—*Ib.*

The rates of forty-six cents per hundred pounds on grain and fifty-one cents on flour and meal between the grain region in Kansas and a large district in Texas are the same for distances shorter than two hundred and fifty and longer than eight hundred miles and are unreasonably high for the longer and grossly excessive and extortionate for the shorter distances.—*Ib.*

6. CONSIDERATIONS WHICH AFFECT THE QUESTION.—In fixing reasonable rates the requirements of operating expenses, bonded debt, fixed charges and dividend on capital stock from the total traffic are all to be considered, but the claim that any particular rate is to be measured by these as a fixed standard, below which the rate may not lawfully be reduced, is one rightly subject to some qualifications, one of which is the obligations must be actual and in good faith.—*Ib.*

The generally recognized principle that cost of carriage is in inverse ratio to distance, and that therefore the charge per ton per mile should diminish with distance, is not a rule required by the statute, and is subject to qualifications and exceptions.

Manufacturers' and Jobbers' Union of Mankato *v.* Minneapolis & St. Louis Railway Company *et al.*, 79.

7. FOOD PRODUCTS.—When investigation concerning reasonableness of rates on food products was conducted in substantial compliance with the statute.

In re Alleged Excessive Freight Rates and Charges on Food Products, 116.

8. DUTY OF COMMISSION TO ENFORCE PROVISIONS OF ACT CONCERNING.

The Act to regulate commerce makes it the duty of the Interstate Commerce Commission to execute and enforce the provisions of the Act which require rates and charges to be reasonable.—*Ib.*

9. RELATION TO COST OF PRODUCTION AND VALUE OF THE SERVICE.

The rate of compensation which railroad companies may lawfully receive for transportation services cannot be so limited that the shipper may in all cases realize actual cost of production.

In re Alleged Excessive Freight Rates and Charges on Food Products, 48.

Charges for transportation service should have reasonable relation to cost of production and to the value of the service to the producer and shipper, but should not be so low on any as to impose a burden on other traffic.—*Ib.*

But the higher rate for a special service should bear a just relation to the value of the service to the traffic, and is not wholly in the discretion of the carrier. While a carrier should be fully compensated, the public interests require that the traffic should not be rendered valueless to the producer, if the charges of the carrier have such an effect and can be reasonably reduced.

Delaware State Grange etc. *v.* New York, Philadelphia & Norfolk Railroad Company *et al.*, 588.

10. RATES LONG CONTINUED PRESUMED PROFITABLE.—In the carriage of great staples, which supply an enormous business and which in market value and actual cost of transportation are among the cheapest articles of commerce, rates yielding only moderate profit to the carrier are both necessary and justifiable, and where the carriers frequently put in force and continue for considerable periods of time tariffs of rates and charges, it is a fair inference that such rates and charges are profitable.

In re Alleged Excessive Freight Rates and Charges on Food Products, 48.

A railroad company by putting in force a rate of charges furnishes evidence that the rate is profitable, which is more convincing when such rate is long maintained; and where a carrier put in force and maintained for nearly two years immediately after the Act to regulate commerce took effect, a scale of charges largely in excess of that maintained for two years next before the Act, and the lower rates were sufficient to meet all the obligations of the road, including income on investment—*Held*, The higher rate should be reduced.

Coxe Brothers & Company *v.* Lehigh Valley Railroad Company, 535.

11. NOT NECESSARILY PROPORTIONATE TO DISTANCE.—The doctrine that an estimated proportion of the through rate must not be less than the local rate from an intermediate point to another point named on the line covered by the through rate, has often been held by the Commission to be untenable.

Poughkeepsie Iron Company *v.* New York Central & Hudson River Railroad Company *et al.*, 195.

Besides terminal expenses and other aggregate charges not dependent upon the distance freight is moved, there are other conditions which justify a lower proportionate charge for longer distances.

Coxe Brothers & Company *v.* Lehigh Valley Railroad Company, 535.

12. PRESUMPTION.—The filing of schedules raises no presumption as to the legality of the rates, and no omission or failure to challenge or disapprove the schedules so filed can have the effect of making rates lawful which are unreasonable.

San Bernardino Board of Trade *v.* Atchison, Topeka & Santa Fe Railroad Company *et al.*, 104.

13. PIG IRON.—On complaint of unreasonable rates on pig iron from Poughkeepsie, N. Y., to points in Massachusetts, it was held that rates charged to petitioner are the same in substance as rates charged other

manufacturers of pig iron at producing furnaces in the State of New York, and are in themselves as well as relatively, just and reasonable.

Poughkeepsie Iron Company *v.* New York Central & Hudson River Railroad Company *et al.*, 195.

14. SURGICAL CHAIRS.—Surgical chairs compared with other freight, and reasons stated as to what the rates on them should be as articles of commerce in course of transportation.

Harvard Company *v.* Pennsylvania Company *et al.*, 212.

15. PETROLEUM AND ITS PRODUCTS.—No question is presented in this case as to whether the rates charged by the all-rail carriers at intermediate points are just and reasonable or not, but, on the contrary, the case was so presented and tried as to distinctly indicate to the Commission that no decision was desired in regard to this matter, for no evidence was offered concerning it by either side; and the case being one that is *inter partes* commenced, prosecuted and defended by able counsel for the respective parties, the Commission has heard, considered and determined it as presented by the parties and their counsel.

Rice *v.* Atchison, Topeka & Santa Fe Railroad Company *et al.*, 228.

16. CHARGE MADE BY ADDING LOCAL RATES.—Flour.

According to the evidence, the cost of serving is far less expensive to the carriers in doing the through business than in doing separately, each for itself, the combined local business of the two railroad companies. It does not appear that the through rate to Boston is unreasonably low; nor does it appear upon the evidence in this proceeding that the local rates of these two railroad companies are unjust and unreasonable.

King & Company *v.* New York, New Haven & Hartford Railroad Company *et al.*, 251.

17. CONTRACTS BETWEEN THE PARTIES MADE PRIOR TO THE ACT.—Coal.

That complainant is precluded, by the terms of the contract for shipping coal to Hoboken, from going into evidence to show that the rate on his coal to Hoboken ought to be different from that fixed by the contract; and witnesses and evidence asked for to that end are immaterial.

Haddock *v.* Delaware, Lackawanna & Western Railroad Company, 296.

The contracts providing that complainant may ship coal to points north and west, on the same terms and rates that respondent for the the time being gives other persons, do not preclude complainant from showing that such rates are unjust, oppressive or unreasonable. Complainant is therefore entitled to hearing upon that question.—*Ib.*

The respondent's motion to dismiss the complaint *in toto* is denied, as good ground of complaint is set forth in respect to northern and western shipments.—*Ib.*

18. DISCUSSION ON THE SUBJECT.

Report of Interstate Commerce Commission, 358.

19. FOREIGN AND DOMESTIC TRAFFIC.

New York Board of Trade and Transportation *et al. v.* Pennsylvania Railroad Company *et al.*, 447.

20. COMMISSION TO DETERMINE.—The Act to regulate commerce declares every unreasonable charge unlawful, requires the Commission to enforce its provisions and confers the power, and imposes on the Commission the duty of determining what are reasonable rates as well as what are unreasonable.

Coxe Brothers & Company *v.* Lehigh Valley Railroad Company, 535.

21. REMOVAL OF UNJUST DISCRIMINATION BY CORRECTION OF UNREASONABLE RATES.—*Ib.*

22. COMMERCIAL CONSIDERATIONS—RIGHTS OF PRODUCERS.

The requirement of the statute that all rates shall be reasonable and just involves a consideration of the commercial value of the traffic, and implies that rates should be so adjusted that producers of traffic as well as carriers may carry on their pursuits successfully, if practicable for both and without injustice to the carrier. The public good requires what is plainly the spirit of the law, that the transportation interests are not alone to be considered, but that in the just exercise of regulation care should be taken that the lawful and necessary occupations of citizens are not unjustly burdened.

Delaware State Grange etc. *v.* New York, Philadelphia & Norfolk Railroad Company *et al.*, 588.

23. PERISHABLE FREIGHT—SPECIAL TRAIN SERVICE AND CAR EQUIPMENT.

The complaint was that the defendants' charges for the transportation of specified perishable articles of truck-farming from stations on their lines of railroad to Jersey City and Philadelphia were excessive and unreasonable, and that the charges were higher for the shorter distances from their stations on the Peninsula in Delaware and Maryland than for the longer distance from Norfolk, Virginia. It was found that the charges on certain articles specified from stations on the Peninsula were excessive, and a reduction was ordered.—*Ib.*

For a special service by a carrier, such as the transportation of perishable freight, requiring quick movement, prompt delivery at destination, special fitting up of cars, their withdrawal from other service, and their return empty on fast time, all involving greater expense to the carrier, a higher rate than for the carriage of ordinary freight is warranted by the conditions of the service and is reasonable and just.—*Ib.*

Elements that will be considered in fixing the rates for the transportation of perishable fruit, under special circumstances, discussed and applied to the facts found.

Boston Fruit and Produce Exchange *v.* New York & New England Railroad Company *et al.*, 664.

The gist of the present complaint is that the rate on peaches from the Delaware district to Boston is unreasonably high and oppressive, and, the fact being so found, a reduction is ordered.—*Ib.*

See RELATIVE RATES; PREFERENCE OR ADVANTAGE; UNJUST DISCRIMINATION; CARRIERS; CLASSIFICATION; LONG AND SHORT HAUL CLAUSE; MILEAGE RATES; THROUGH AND LOCAL RATES.

REBATES.

FROM RATES ON LIVE CATTLE.

Shamberg *v.* Delaware, Lackawanna & Western Railroad Company *et al.*, 630.

See PREFERENCE OR ADVANTAGE, 15.

RE-HEARING.

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RELATIVE RATES.

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The cost of the production of pig iron at a furnace situated like that of petitioner on the Hudson River in the State of New York is much greater than at Youngstown, Ohio, or Birmingham, Alabama, or at other points in the west and south; and while the aggregate rate charged petitioner to New England mills is a great deal lower than the aggregate rate charged on these western and southern irons to the same mills, yet it is not sufficiently so to overcome the difference in the cost of production; and the consequence is that petitioner finds itself at a serious disadvantage in competing with these western and southern irons in the markets and mills of the New England States where there is a very great demand for this class of property.—*Ib.*

The Commission has no power and authority in this proceeding to order other carriers not parties to this proceeding to raise their rates on pig iron transported from Youngstown and Cleveland, Ohio, to New England points in order to overcome the difference in the cost of production of pig iron now existing against petitioner; nor would the Commission enter upon the consideration of any such subject in a proceeding to which such carriers were not parties and in which such localities sought to be burdened with higher rates, for example, Youngstown and Cleveland, Ohio, had no opportunity to be heard; and the findings of fact in the present proceeding, which show that the rates already charged petitioner by the defendants are in themselves, as well as relatively, just and reasonable rates, demonstrate that the Commission could not order the defendants to lower these rates from Poughkeepsie to all points on the Boston & Albany road one-half, and Holyoke nearly one-half, in order to overcome the difference in the cost of production of pig iron now existing against petitioner.—*Ib.*

6. COMPETITIVE ARTICLES.—HOGS AND HOG PRODUCT. As articles of commerce the live hog and its product are in direct competition with each other at the points named in this proceeding and in the chief markets of the country, and are entitled to rates not only reasonable and just in themselves, but relatively reasonable and just in their bearing upon these different localities.

Board of Trade of the City of Chicago *v.* Chicago & Alton Railroad Company *et al.*, 158.

7. ON COMPETITIVE ARTICLES SHOULD BE ADJUSTED WITH REFERENCE TO COST OF SERVICE. HOGS AND HOG PRODUCT.—The relation of rates ought to rest upon fixed and stable conditions. The fluctuations of markets are so frequent, especially as to competitive articles, and oftentimes unexpected, that commercial considerations alone would not furnish a sufficiently stable and fixed rule for guidance in making a rate that should remain substantially permanent through all fluctuations. The Commission does not, by a fixing of rates, attempt to overcome advantages which one producer or dealer may have in his geographical location, and to produce equality between competitors in all markets. It would be a useless task, even if it had the power, to attempt to accomplish such a result. The proper relation of rates for transportation of strictly competitive articles over the same line should be determined by reference to respective costs of service ascertained with reasonable accuracy.

Squire & Company *v.* Michigan Central Railroad Company *et al.*, 611.

Violation by one carrier of principles laid down in this case as governing relative rates on competitive articles does not justify similar violations by its competitors.—*Ib.*

The rates involved in this case are those on live hogs, live cattle and the dressed products of each. These are found to be competitive commodities and therefore entitled to relatively reasonable rates for transportation proportioned to each other according to the respective costs of service.—*Ib.*

8. CORN AND CORN PRODUCTS.
Bates *v.* Pennsylvania Railroad Company *et al.*, 281.

9. WHEAT AND FLOUR. LOCALITIES.
Kauffman Milling Company *v.* Missouri Pacific Railway Company *et al.*, 417.

10. COAL AND OTHER LOW GRADE FREIGHT. COAL AND GENERAL FREIGHT.—A railroad company had in force for a period of more than two years next before the Act to regulate commerce took effect a scale of charges on anthracite coal considerably lower than its present rates, which are higher on coal than on iron ore, pig iron and other low grade freight, and also higher than the charges of said road on general freight, the expense of carrying which is much greater than the expense on coal. *Held*, that such higher rates on coal are unreasonable.
Coxe Brothers & Company *v.* Lehigh Valley Railroad Company, 535.

11. PERISHABLE AND ORDINARY FREIGHT.
Delaware State Grange etc. *v.* New York, Philadelphia & Norfolk Railroad Company *et al.*, 588.
Boston Fruit and Produce Exchange *v.* New York & New England Railroad Company, 664.

See REASONABLE RATES; PREFERENCE OR ADVANTAGE; UNJUST DISCRIMINATION; LONG AND SHORT HAUL CLAUSE; CLASSIFICATION; CARRIERS.

REPARATION.

WHEN MADE NO ORDER WILL BE ISSUED.
New Orleans Cotton Exchange *v.* Louisville, New Orleans & Texas Railway Company, 694.

REPORT OF INTERSTATE COMMERCE COMMISSION.

1. WORK OF THE COMMISSION FOR THE YEAR, 325.
2. PRACTICAL WORKINGS OF REGULATION, 333.
3. JUDICIAL AND ADMINISTRATIVE QUESTIONS, 337.
4. RATE WARS AND RATE CUTTING, 351.
5. REASONABLE RATES, 358.
6. UNIFORM CLASSIFICATION, 364.
7. LONG AND SHORT HAULS, 371.
8. RAILROAD REGULATION IN THE STATES, 386.
9. RAILROAD REGULATION IN FOREIGN COUNTRIES, 387.
10. GOVERNMENT-AIDED RAILROAD AND TELEGRAPH LINES, 388.
11. TICKET BROKERAGE, 389.
12. THROUGH ROUTES AND THROUGH RATES, 397.
13. STATISTICAL REPORT OF THE COMMISSION, 402.
14. PAYMENT OF COMMISSIONS, 406.
15. CONSOLIDATION OF ROADS, 409.
16. AMENDMENTS TO THE ACT, 410.

RETURN LOADS.

FOR EMPTY CARS.
Lehmann, Higginson & Company *v.* Southern Pacific Company, *et al.*, 1
See CARS, 1; LONG AND SHORT HAUL CLAUSE, 2.

RIGHTS OF WAY.

To Private Live Stock Cars.

Shamberg v. Delaware, Lackawanna & Western Railroad Company *et al.*, 630.

See Preference or Advantage, 15.

RISK.

See Carriers, 8.

SALTED HIDES AND PELTS.

McMillan & Company v. Western Classification Committee, 276.

SCHEDULES.

See Tariffs.

SECOND SECTION.

See Unjust Discrimination; Relative Rates.

SEVENTH SECTION.

Considered in Construction of First Section.—Section seven of the Act may properly be considered in construing the general jurisdictional clause of the first section.

Boston Fruit and Produce Exchange v. New York & New England Railroad Company *et al.*, 664.

SHIPPERS.

1. **Representations of.**—In the classification of articles the shippers representations to the public as to their character may properly be taken into account in ascertaining the analogy they bear to other articles and determining the class to which they justly belong.

 Warner v. New York Central & Hudson River Railroad Company *et al.*, 32.

 Andrews Soap Company v. Pittsburgh, Cincinnati & St. Louis Railway Company *et al.*, 41.

2. **Rights of.**

 Delaware State Grange etc. v. New York, Philadelphia & Norfolk Railroad Company *et al.*, 588.

See Reasonable Rates 9, 22.

SHIPMENTS.

See Carloads and Less than Carloads; Traffic.

SIXTH SECTION.

See Tariffs.

SOAP.

Andrews Soap Company v. Pittsburgh, Cincinnati & St. Louis Railway Company *et al.*, 41.

Proctor & Gamble v. Pittsburgh, Cincinnati & St. Louis Railway Company *et al.*, 87, 443.
Beaver & Company v. Pittsburgh, Cincinnati & St. Louis Railway Company *et al.*, 723.

SPECIAL RATES.

New York Board of Trade and Transportation *et al.* v. Pennsylvania Railroad Company *et al.*, 447.

SPECIAL TRAIN SERVICE.

Board of Trade of the City of Chicago v. Chicago & Alton Railroad Company *et al.*, 158.
Delaware State Grange etc. v. New York, Philadelphia & Norfolk Railroad Company *et al.*, 588.
Boston Fruit and Produce Exchange v. New York & New England Railroad Company *et al.*, 664.

STATIONS.

THROUGH AND LOCAL.

See THROUGH AND LOCAL RATES; LOCAL RATES; THROUGH RATES.

STEAMBOAT LINES.

Capehart *et al.* v. Louisville & Nashville Railroad Company *et al.*, 265.

See THROUGH ROUTES AND THROUGH RATES.

SUBPŒNA DUCES TECUM.

See PRACTICE, 10; BOOKS, PAPERS AND DOCUMENTS; DOCUMENTARY EVIDENCE.

SURGICAL CHAIRS.

Harvard Company v. Pennsylvania Company *et al.*, 212.

TANK CARS.

See CARS, 2, 3, 4, 5, 6; UNJUST DISCRIMINATION, 4, 5, 6.

TANK STATIONS.

Rice v. Atchison, Topeka & Santa Fe Railroad Company *et al.*, 228.

TARIFFS.

1. STRAIGHT RATES TO DESTINATION SHOULD BE SHOWN UPON.

Lehmann, Higginson & Company v. Southern Pacific Company *et al.*, 1.
Rice v. Atchison, Topeka & Santa Fe Railroad Company *et al.*, 228.
Hamilton & Brown v. Chattanooga, Rome & Columbus Railroad Company *et al.*, 686.

2. RATES TO EVERY POINT ON A LINE SHOULD BE SHOWN ON.

Lehmann, Higginson & Company v. Southern Pacific Company *et al.*, 27.

3. IN FORCE FOR CONSIDERABLE PERIODS.

In re Alleged Excessive Freight Rates and Charges on Food Products, 48.
Coxe Brothers & Company v. Lehigh Valley Railroad Company, 535.

4. PRODUCTION OF AT INVESTIGATIONS.

In re Alleged Excessive Freight Rates and Charges on Food Products, 116.

5. FILING AND PUBLICATION.—The filing of schedules of rates with the Commission as required by statute raises no presumption as to the legality of such rates, and no omission or failure to challenge or disapprove the schedules of rates so filed can have the effect of making rates lawful which are unreasonable.

San Bernardino Board of Trade *v.* Atchison, Topeka & Santa Fe Railroad Company *et al.*, 104.

It appears that the Southern Pacific Company and the Atchison, Topeka & Santa Fe Railroad Company each has several stations on their lines at which no publication is made in their tariffs of the rates at these stations; and this they admit; and the Commission finds that this conduct on their part has been owing to a misapprehension and misconstruction of the law and in accordance with a usage and practice long existing among railroads; the Commission therefore orders them to make publication of the rates they charge at these stations in their tariffs; and in all other respects, as to these defendants and the Union Pacific Railway Company, the petition in this proceeding stands dismissed.

Rice *v.* Atchison, Topeka & Santa Fe Railroad Company *et al.*, 228.

The publication of such inland joint tariffs for the transportation of such foreign merchandise under the statute and of advances and reductions should be made at the port of entry and also at the point of destination of freight in the United States by posting the same in a public place at the depot of the carrier where the freight is received in the port of entry and where it is delivered at the place of destination in the United States.

New York Board of Trade and Transportation *v.* Pennsylvania Railroad Company *et al.*, 447.

Common carriers are required to post in their depots, stations and offices schedules showing the rates and charges for transportation in force on the routes of such carriers, as well on freight which is, as on that which is not, for export.

New Orleans Cotton Exchange *v.* Louisville, New Orleans & Texas Railway Company, 694.

6. EXPORT.—*Ib.*

7. IMPORT.

New York Board of Trade and Transportation *et al. v.* Pennsylvania Railroad Company *et al.*, 447.

8. UNLAWFUL REBATES FROM RATES SHOWN ON.

Shamberg *v.* Delaware, Lackawanna & Western Railroad Company, *et al.*, 630.

9. CONSIDERATION OF AS EVIDENCE AFTER FILING.

Boston Fruit and Produce Exchange *v.* New York & New England Railroad Company *et al.*, 664.

TERMINAL EXPENSES.

Bates *v.* Pennsylvania Railroad Company *et al.*, 281.

TERMINAL STATIONS.

POSTING OF TARIFFS IN.

New Orleans Cotton Exchange *v.* Louisville, New Orleans & Texas Railway Company, 694.

TESTIMONY.

See EVIDENCE.

THIRD PARTIES.

Haddock *v.* Delaware, Lackawanna & Western Railroad Company, 296.

See PRACTICE, 10.

THIRD SECTION.

CARRIERS REFERRED TO.—The common carriers named and referred to in the last clause of section 3 of the Act to regulate commerce are such alone as are subject to the provisions of that statute.

Capehart *et al. v.* Louisville & Nashville Railroad Company *et al.*, 265.

See PREFERENCE OR ADVANTAGE; THROUGH ROUTES AND THROUGH RATES; FACILITIES OF TRAFFIC; TRAFFIC.

THIRTEENTH SECTION.

See COMPLAINANT; COMPLAINT; INTERSTATE COMMERCE COMMISSION.

THROUGH AND LOCAL RATES.

1. CHARGE BASED ON THROUGH RATE ADDED TO LOCAL RATE BACK TO DESTINATION.

Lehmann, Higginson & Co. *v.* Southern Pacific Company *et al.*, 27.

2. PETROLEUM AND ITS PRODUCTS.

Rice *v.* Atchison, Topeka & Santa Fe Railroad Company *et al.*, 228.

3. WATER AND RAIL LINES.

Capehart *et al. v.* Louisville & Nashville Railroad Company *et al.*, 265.

4. THROUGH RATES MAY BE PROPORTIONATELY LOWER THAN LOCAL RATES.

Lehmann, Higginson & Company *v.* Southern Pacific Company *et al.*, 1.

Poughkeepsie Iron Company *v.* New York Central & Hudson River Railroad Company *et al.*, 195.

Coxe Brothers & Co. *v.* Lehigh Valley Railroad Company, 535.

5. ADDITION OF THROUGH RATE TO COMPETITIVE POINT AND LOCAL RATE TO DESTINATION.

Hamilton & Brown *v.* Chattanooga, Rome & Columbus Railroad Company *et al.*, 186.

James & Mayer Buggy Company *v.* Cincinnati, New Orleans & Texas Pacific Railway Company *et al.*, 744.

See THROUGH ROUTES AND THROUGH RATES; THROUGH RATES; LOCAL RATES; MILEAGE RATES.

THROUGH BILLS OF LADING.

Capehart *et al. v.* Louisville & Nashville Railroad Company *et al.*, 265.

New York Board of Trade and Transportation *et al. v.* Pennsylvania Railroad Company *et al.*, 447.

Boston Fruit and Produce Exchange *v.* New York & New England Railroad Company *et al.*, 664.

James & Mayer Buggy Company *v.* Cincinnati, New Orleans & Texas Pacific Railway Company *et al.*, 744.

THROUGH RATES.

Poughkeepsie Iron Co. *v.* New York Central & Hudson River Railroad Company *et al.*, 195.
King & Company *v.* New York, New Haven & Hartford Railroad Company *et al.*, 251
Capehart *et al. v.* Louisville & Nashville Railroad Company *et al.*, 265.
Boston Fruit and Produce Exchange *v.* New York & New England Railroad Company *et al.*, 664.

See REASONABLE RATES; MILEAGE RATES; THROUGH AND LOCAL RATES; THROUGH ROUTES AND THROUGH RATES.

THROUGH ROUTES AND THROUGH RATES.

1. To COMPETITIVE POINTS.

Little Rock & Memphis Railroad Company *v.* East Tennessee, Virginia & Georgia Railway Company *et al.*, 3 I. C. C. Rep. 1, cited and affirmed.

King & Company *v.* New York, New Haven & Hartford Railroad Company *et al.*, 262.

2. RAIL AND WATER LINES — CARRIERS NOT SUBJECT TO THE ACT — REPARATION — DISMISSAL OF COMPLAINT.—Several rail carriers engaged in interstate commerce each cross or touch a navigable river, leaving a large space of territory along and near the river and between their lines that can be served only by steamboats, and in connection with steamboats these rail carriers carry freight to and receive it from this territory at points where they touch or cross the river respectively, but as to it they make through rates with only one line of steamboats, and refuse to make such through rates with other steamboats on the river: *Held*, that under the law the rail carriers may do this, and that it is not unjust discrimination nor unlawful preference. Citing Napier *v.* The Glasgow & Southwestern Railway Company, 1 Railway and Canal Cases, 292.

Capehart *et al. v.* Louisville & Nashville Railroad Company *et al.*, 265.

In such a case all that a steamboat has a right to demand, with which the rail carriers have refused to make through rates and to do through billing, is that the rail carriers shall receive from and deliver to such steamboat freight for transportation at their published local tariff rates. —*Ib.*

Through rates and through billing are matters of agreement among carriers engaged in interstate commerce, and, as was decided in the case of The Little Rock & Memphis Railroad Company *v.* The East Tennessee, Virginia & Georgia Railroad Company, 2 Inters. Com. Rep. 454; 3 I. C. C. Rep. 1, the Commission has no power under the statute to compel them against their consent to enter into arrangements for through rates and for through billing.—*Ib.*

An aggregate through rate is itself an entirety, although made up of agreed percentages, proportions or divisions, as the case may be, of the entire rate among the several carriers; and where the rail carrier makes a through rate from a point on a navigable river with a steamboat line, and refuses to make such through rate with another steamboat, the Commission cannot compel the rail carrier to receive freight from or deliver it to the steamboat, with which it has refused to make a through rate and to do through billing, upon the prepayment of charges for an estimated proportion of the through rate equal in amount to that which the rail carrier receives from the steamboat line with which it has an arrangement for through rates and through billing.—*Ib.*

Where a carrier not subject to the Act to regulate commerce—for example, a steamboat plying the Tennessee River between Decatur,

Alabama, and Bridgeport, in the same State—has applied to rail carriers engaged in interstate commerce for through rates and through billing of freight, and has been refused these, and during a period of several years has paid these rail carriers their local published tariff rates on freight, and now sues to recover the difference between the amount so paid on the local rates and the proportion of the through rate between the same points covered by the local rates:

Held, that no recovery can be had in such a proceeding before the Interstate Commerce Commission, and the complaint is dismissed without prejudice.—*Ib.*

3. SUBJECT DISCUSSED.

Report of Interstate Commerce Commission, 397.

4. THROUGH CARRIAGE OVER CONNECTING LINES.—Through transportation over connecting lines is favored by the statute, and the rate over such through lines is correctly adjusted upon the distance through, and not upon the shorter distances over, the several lines.

Coxe Brothers & Company *v.* Lehigh Valley Railroad Company, 535.

5. DISCRIMINATION BETWEEN CONNECTING LINES.—The respondent, which is a carrier by a railroad running through the State of Connecticut to a point in New York, had had for some time a through billing arrangement and an agreement upon through rates for traffic over its own line destined to New York City, with petitioner's road, which connected therewith at its New York terminus. This arrangement respondent broke up, and declined to enter into any new one in its place.

The reason for breaking up the arrangement was that respondent had entered into a new arrangement with another road connecting with it at a point in Connecticut, whereby a New York City line was formed over which it was intended to take the business which formerly passed over respondent's line to petitioner's. It was not complained that petitioner's road was insolvent or not responsible for its contracts, or that the arrangement as before existing was unfair or unequal as between the parties thereto.

Such action of the respondent is held to be in violation of the second paragraph of section three of the Act to regulate commerce, which requires that "every common carrier subject to the provisions of this Act shall, according to their respective powers, afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business."

New York & Northern Railway Company *v.* New York & New England Railroad Company *et. al.*, 702.

6. INTEREST IN THE COMPETING LINE.—One reason assigned for breaking up the arrangement with petitioner was that respondent was joint owner with the road making the new line, of a terminal company for delivery of freight in New York. This interest is not an excuse under the statute for discrimination against petitioner's line, and this whether the interest in the terminal company was large or small. Petitioner did not require or ask the services of the terminal company, but only to be allowed to continue as competitor for the business affected by the discrimination, and to offer its services to the public as such. It is found in the case that the public interest was injuriously affected by the discrimination.—*Ib.*

7. TERMINAL DELIVERY BY AN AGENT.—It is of no importance to the question involved that after freight carried by petitioner's road reached High

Bridge, in New York, its delivery from that point to the pier, which constituted the terminus of the carriage, was made by an agent or contractor employed for the purpose. Petitioner, being carrier for the whole distance, was entitled to the privileges given by the statute accordingly.—*Ib.*

TICKET BROKERAGE.

SUBJECT DISCUSSED.

Report of Interstate Commerce Commission, 389.

TICKETS.

1. SALE OF BY TICKET BROKERS.

Report of Interstate Commerce Commission, 389.

2. COMMISSIONS ON THE SALE OF.

Report of Interstate Commerce Commission, 406.

TRADE CONDITIONS.

Kauffman Milling Company *v.* Missouri Pacific Railway Company *et al.*, 417.

See COMMERCIAL CONSIDERATIONS; LOCATION.

TRAFFIC.

1. CARRIAGE MUST YIELD SOME PROFIT TO THE CARRIER.

Lehmann, Higginson & Company *v.* Southern Pacific Company *et al.*, 1.
In re Alleged Excessive Freight Rates and Charges on Food Products, 48.

2. SUGAR.

Lehmann, Higginson & Company *v.* Southern Pacific Company *et al.*, 1.

3. BULK, WEIGHT, VALUE AND CHARACTER.

Lehmann, Higginson & Company *v.* Southern Pacific Company *et al.*, 1.
Warner *v.* New York Central & Hudson River Railroad Company *et al.*, 32.
Andrews Soap Company *v.* Pittsburgh, Cincinnati & St. Louis Railway Company *et al.*, 41.
In re Alleged Excessive Freight Rates and Charges on Food Products, 48.
Harvard Company *v.* Pennsylvania Company *et al.*, 212.
Kauffman Milling Company *v.* Missouri Pacific Railway Company *et al.*, 417.
New York Board of Trade and Transportation *et al. v.* Pennsylvania Railroad Company *et al.*, 447.
Delaware State Grange etc. *v.* New York, Philadelphia & Norfolk Railroad Company *et al.*, 588.
Squire & Company *v.* Michigan Central Railroad Company *et al.*, 611.
Beaver & Company *v.* Pittsburgh, Cincinnati & St. Louis Railway Company *et al.*, 733.

4. PATENT MEDICINES. ALE, BEER AND MINERAL WATER. VOLUME.

Warner *v.* New York Central & Hudson River Railroad Company *et al.*, 32.

5. SOAP.

Andrews Soap Company *v.* Pittsburgh, Cincinnati & St. Louis Railway Company *et al.*, 41.

Proctor & Gamble *v.* Cincinnati, Hamilton & Dayton Railroad Company *et al.*, 87.
Beaver & Company *v.* Pittsburgh, Cincinnati & St. Louis Railway Company *et al.*, 733.

6. Food Products.
In re Alleged Excessive Freight Rates and Charges on Food Products, 48, 116.

7. Flour.
In re Alleged Excessive Freight Rates and Charges on Food Products, 48.
King & Company *v.* New York, New England & Hartford Railroad Company *et al.*, 251.
Kauffman Milling Company *v.* Missouri Pacific Railway Company *et al.*, 417.

8. Petroleum and its Products.—*Ib.*
Rice *v.* Atchison, Topeka & Santa Fe Railroad Compay *et al.*, 228.

9. Like, over Divisions of Consolidated Line.
Rice, Robinson and Witherop *v.* Western New York & Pennsylvania Railroad Company, 131.

10. Live Hogs.
Board of Trade of the City of Chicago *v.* Chicago & Alton Railroad Company *et al.*, 158.
Squire & Company *v.* Michigan Central Railroad Company *et al.*, 611.

11. Dressed Hogs.
Board of Trade of the City of Chicago *v.* Chicago & Alton Railroad Company *et al.*, 158.
Squire & Company *v.* Michigan Central Railroad Company *et al.*, 611.

12. Packing House Product.
Board of Trade of the City of Chicago *v.* Chicago & Alton Railroad Company *et al.*, 158.
Squire & Company *v.* Michigan Central Railroad Company *et al.*, 611.

13. Competitive.
Board of Trade of the City of Chicago *v.* Chicago & Alton Railroad Company *et al.*, 158.
Poughkeepsie Iron Company *v.* New York Central & Hudson River Railroad Company *et al.*, 195.
Delaware State Grange etc. *v.* New York, Philadelphia & Norfolk Railroad Company *et al.*, 588.
Squire & Company *v.* Michigan Central Railroad Company *et al.*, 611.

14. Pig Iron.
Poughkeepsie Iron Company *v.* New York Central & Hudson River Railroad Company *et al.*, 195.

15. Surgical Chairs.
Harvard Company *v.* Pennsylvania Company *et al.*, 212.

16. Interchange of.
Capehart *et al v.* Louisville & Nashville Railroad Company *et al.*, 265.
New York & Northern Railway Company *v.* New York & New England Railroad Company *et al.*, 702.

17. Facilities of.
Capehart *et al. v.* Louisville & Nashville Railroad Company *et al.*, 265.
New York & Northern Railway Company *v.* New York & New England Railroad Company *et al.*, 702.

18. SALTED HIDES AND PELTS.
McMillan & Company *v.* Western Classification Committee, 276.

19. CORN AND CORN PRODUCTS.
Bates *v.* Pennsylvania Railroad Company *et al.*, 281.

20. COAL.
Haddock *v.* Delaware, Lackawanna & Western Railroad Company, 296.
Coxe Brothers & Company *v.* Lehigh Valley Railroad Company, 535.

21. LOW GRADE.
Coxe Brothers & Company *v.* Lehigh Valley Railroad Company, 535.

22. GENERAL.
Coxe Brothers & Company *v.* Lehigh Valley Railroad Company, 535.

23. WHEAT AND FLOUR.
Kauffman Milling Company *v.* Missouri Pacific Railway Company *et al.*, 417.

24. IMPORT.
New York Board of Trade and Transportation *et al. v.* Pennsylvania Railroad Company *et al.*, 447.

25. FOREIGN AND DOMESTIC.—*Ib.*

26. LIKE KIND OF TRAFFIC.—*Ib.*

27. PERISHABLE FREIGHT.
Delaware State Grange etc. *v.* New York, Philadelphia & Norfolk Railroad Company *et al.*, 588.
Boston Fruit and Produce Exchange *v.* New York and New England Railroad Company *et al.*, 664.

28. PEACHES.
Delaware State Grange etc. *v.* New York, Philadelphia & Norfolk Railroad Company *et al.*, 588.
Boston Fruit and Produce Exchange *v.* New York & New England Railroad Company *et al.*, 664.

29. LIVE CATTLE.
Squire & Co. *v.* Michigan Central Railroad Company *et al.*, 611.
Shamberg *v.* Delaware, Lackawanna & Western Railroad Company *et al.*, 630.

30. DRESSED BEEF.
Squire & Company *v.* Michigan Central Railroad Company *et al.*, 611.

31. COTTON.
New Orleans Cotton Exchange *v.* Louisville, New Orleans & Texas Railway Company, 694.

32. EXPORT.
New Orleans Cotton Exchange *v.* Louisville, New Orleans & Texas Railway Company, 694.

33. VEHICLES.
James & Mayer Buggy Company *v.* Cincinnati, New Orleans & Texas Pacific Railway Company *et al.*, 744.

34. WHAT IS INTERSTATE.
Boston Fruit and Produce Exchange *v.* New York & New England Railroad Company *et al.*, 664.
James & Mayer Buggy Company *v.* Cincinnati, New Orleans & Texas Pacific Railway Company *et al.*, 744.

TRANSPORTATION.

See CARRIERS; ACT TO REGULATE COMMERCE; TRAFFIC; THROUGH ROUTES AND THROUGH RATES; RATES; REASONABLE RATES; RELATIVE RATES; PREFERENCE OR ADVANTAGE; LONG AND SHORT HAUL CLAUSE; UNJUST DISCRIMINATION; CLASSIFICATION.

TWELFTH SECTION.

AMENDMENT OF, 758.

UNIFORM CLASSIFICATION.

McMillan & Company *v.* Western Classification Committee, 276.
Report of Interstate Commerce Commission, 364.
Kauffman Milling Company *v.* Missouri Pacific Railway Company *et al.*, 417.

See CLASSIFICATION.

UNITED STATES COURTS.

ENFORCEMENT OF ORDERS OF COMMISSION IN.
In re Alleged Excessive Freight Rates and Charges on Food Products, 116.

UNITED STATES SENATE.

RESOLUTION DIRECTING INVESTIGATION OF ALLEGED UNREASONABLENESS OF RATES ON FOOD PRODUCTS.
In re Alleged Excessive Freight Rates and Charges on Food Products, 48, 116.

UNJUST DISCRIMINATION.

1. BETWEEN LOCALITIES.

Upon complaint by dealers at Humboldt, Kans., against the respondent lines for unjust discrimination in charging a rate of 65 cents per hundred pounds on sugar transported from San Francisco to Kansas City, and 85 cents per hundred pounds upon the same commodity from San Francisco to Humboldt, more than a hundred miles shorter distance but not on the through line. *Held*, That the reduced rate to Kansas City being forced upon the carriers by competitive conditions beyond their control, and the rate to Humboldt not being unreasonable in itself but lower than it would be except for the influence of the competitive conditions at Kansas City, and it not appearing that substantial injustice results from the higher rate at Humboldt, the lower rate to Kansas City and the higher rate to Humboldt are not deemed to be in contravention of the statute.

Lehmann, Higginson & Company *v.* Southern Pacific Company *et al.*, 1.

Exact mathematical equality between all localities is not attainable. Some slight differences in the immense complication of localities and of roads are inevitable, and if these differences are substantially reasonable there is no unjust discrimination.—*Ib.*, 29.

Transportation charges are required to be relatively reasonable as well as reasonable in themselves, to prevent unjust discrimination between localities. A locality not widely dissimilar in situation and in respect of the transportation service of the same carrier to other localities where lower rates are given, is entitled to rates that bear a just relation to the lower charges made.

Manufacturers' and Jobbers' Union of Mankato *v.* Minneapolis & St. Louis Railway Company *et al.*, 79.

Complaint being made of unjust discrimination in rates on hogs and hog product against the Pork Packing interests of Chicago in favor of packing houses at Missouri River points and other points in the States of Missouri and Iowa, the Commission after hearing and investigation, set forth in its Report and Opinion the facts found and its conclusions therein, and it was held that none of the various circumstances and conditions relied upon by the carriers to justify the rates complained of warranted the unjust discrimination found to exist against the City of Chicago and against packers and buyers of that city.

Board of Trade of the City of Chicago *v.* Chicago & Alton Railroad Company *et al.*, 158.

A business like that involving the preparation for consumption of such a large and leading staple and necessary of life as meat, with all the competition that exists for it in different and competing localities, brought near to each other by the fast rail lines of the country, is too large to be done in a corner, and is a conspicuous instance of a commodity that requires at the hands of carriers rates that are not only reasonable and just in themselves but relatively reasonable and just in their bearing upon these different localities.—*Ib.*

For reasons peculiar to the territory lying west of the Mississippi River, comprising a large portion of Texas, the State of Missouri and a considerable part of Kansas, the rates on wheat and wheat flour are grouped without reference to distance, and a lower rate has been charged on wheat than on wheat flour for fifteen years or more. Prior to 1886 the difference in the two rates was fifteen cents a hundred pounds or greater. In 1886 a readjustment of rates was made, and upon consideration of all the circumstances and conditions and claims of rival localities the differential was reduced to five cents a hundred pounds, which has since been maintained. Upon complaint made by millers of Missouri, supported also by millers of Kansas, against a differential of five cents a hundred pounds, and claiming an equal rate on wheat and flour carried from Missouri and Kansas into Texas: *Held*, that under the conditions existing in the territory in question a rate of five cents less a hundred pounds on wheat than on flour does not as matter of fact work unjust discrimination, and is not therefore unlawful.

Kauffman Milling Company *v.* Missouri Pacific Railway Company *et al.*, 417.

It appearing that the carriers have at times reduced the rate on wheat without a contemporaneous reduction on flour, and so made a larger differential than five cents a hundred pounds, which is sometimes maintained for a considerable period, it is found that a differential exceeding five cents a hundred pounds works unjust discrimination, and is unlawful.—*Ib.*

Reserving any questions that may arise in case a uniform classification shall be established, at present an exception to a general rule of classification or rate making may be justified by adequate considerations in view of dissimilar conditions in different portions of the country, and when a rigid application of a general rule will be injurious to important public interests an exception is only reasonable.

2. Patent Medicines.—Not entitled to same classification as Ale, Beer and Mineral Water.

Warner *v.* New York Central & Hudson River Railroad Company *et al.*, 32.

3. Soap—A soap advertised and sold as toilet soap, but claimed not substantially superior to certain soaps sold as laundry soaps, was classified in the second class with toilet soaps instead of fourth class with laundry soaps. *Held*, that the manufacturer's description of his product for commercial purposes as an article of superior grade and value warrants its classification accordingly.

Andrews Soap Company v. Pittsburgh, Cincinnati & St. Louis Railway Company *et al.*, 41.

Where two kinds of soap are made use of for the same purposes, and are advertised and held out to the world as suited for like purposes, and are substantially equal in value, they should both for purposes of transportation and rating be placed in the same classification.

Beaver & Company v. Pittsburgh, Cincinnati & St. Louis Railway Company *et al.*, 733.

The soaps known as the Ivory Soap and the Grand Pa's Wonder Soap fall within this rule. Both are represented as suitable for laundry and also for toilet purposes, and both are used for those purposes. It would therefore be unjust discrimination to place one of them in a classification as toilet soap and the other in a much lower classification as laundry soap.—*Ib.*

4. Discrimination between Shippers over Different Divisions of Consolidated Line.

The acquisition and consolidation by a rail carrier under one system of management of different competing lines of road serving the same territory in the carriage of competitive traffic to the same markets, cannot create a right on the part of the carrier to take advantage of the consolidation of interests to deprive the public of the benefits of fair competition, nor afford warrant for oppressive discrimination with a view to its own interests, such as equalizing profits from its several divisions, by making rates and charges for one division that give profitable markets to a portion of its patrons, and higher rates and charges for another division that are destructive to the pursuits of other patrons who are competitors in the same business; but its duty to the public requires that its service must be alike to all who are situated alike.

Rice, Robinson & Witherop v. Western New York & Pennsylvania Railroad Company, 131.

5. Petroleum and its Products. Transportation in Tank Cars and Barrels.

A carrier that employs different methods for the transportation of petroleum oil and its products, in carloads—for example, tank cars in which the oil is carried in bulk, and box cars in which the oil is carried in barrels—is not relieved from its duty in respect to equality of rates by the difference it makes between its patrons in the mode of carriage, but its charges for like quantities carried between like points of shipment and destination must be equal upon the commodity itself, irrespective of the mode of carriage or the tank or barrel package in which it is contained. Differences in circumstances and conditions of transportation that are of a carrier's own creation or connivance, or that by reasonable effort on the part of a carrier might be avoided, cannot justify exceptional rates.—*Ib.*

A tank used in carrying oil is deemed by carriers part of the car and the rate is charged only upon the contents, while for carriage in box cars the barrels containing the oil are treated as freight and the rate is charged both for the weight of the barrel and its contents. The prevention of this prejudice to shippers in barrels requires that for purposes of rates, when a carrier uses both tank and box cars for carrying oil in carloads, the barrels shall be deemed part of the box cars; and that, as in the case of transportation in tanks, the rate shall be charged only for the weight or quantity of oil carried, exclusive of the weight of the barrels, and be the same for like weight or quantity carried in tanks.—*Ib.*

The allowance by a carrier to a shipper of oil in tanks, of 42 gallons, or any number of gallons, from the actual quantity put in a tank, for alleged leakage or waste in transportation, is, in the absence of a corresponding allowance to shippers in barrels, unjust discrimination and unlawful.—*Ib.*

6. FURNISHING CARS. MILEAGE ON TANK CARS.—The fact that a carrier does not own tank cars, but accepts and uses such cars supplied by some of its patrons for their own traffic, is unimportant so far as rates are concerned. It is a carrier's duty to equip its road with instrumentalities of carriage suitable for the traffic it undertakes to carry, and to furnish them alike to all who have occasion for their use, and its duty to furnish equipment cannot be transferred to nor required of shippers. When a carrier accepts and uses cars for transportation owned by shippers or others, in legal contemplation it adopts them as its own for purposes of rates and carriage, and neither the manner of acquiring cars, nor inability to furnish its general patrons the use of cars similar to those furnished by some shippers for their own traffic, can excuse or justify a carrier for discrimination in rates that may give one shipper advantages over another; nor can any device, such as payment of unreasonable rent for use of cars furnished by shippers, be practiced to evade the duty of equal charges for equal service.—*Ib.*

7. FURNISHING CARS. MILEAGE ON LIVE STOCK CARS.

Shamberg *v.* Delaware, Lackawanna & Western Railroad Company *et al.*, 630.

8. STEAMBOAT LINES. THROUGH BILLING AND THROUGH RATES.

Capehart *et al* *v.* Louisville & Nashville Railroad Company *et al.*, 265.

9. CORN AND CORN PRODUCTS.—Upon the evidence produced at the former hearing it was decided that no reason was shown for a differential rate between corn and the direct products of corn, eastward between Indianapolis and the seaboard. The difference in rate complained of was 4½ cents per hundred pounds between Indianapolis and New York, this being the proportion, according to distance, of a five-cent differential between Chicago and New York. Since the first hearing the defendants have reduced the differential to 2½ cents per hundred pounds. The complainants claimed there should be no difference. The evidence produced at the re-hearing satisfied the Commission, upon grounds stated in the opinion, that the former order should be vacated, and that no further order should now be made.

Bates *v.* Pennsylvania Railroad Company *et al.*, 281.

10. CARRIER WHO IS ALSO A MINER AND SHIPPER OF COAL. SEPARATE TRANSPORTATION ACCOUNTS.—The Commission cannot, for the purpose of discovering and preventing unjust discrimination by respondent, which is both a shipper and a carrier of its own products over its own line, compel it to keep separate accounts showing what it charges itself for transportation or what the cost of transportation to it is; and even were such a separate account required, it would form no safe guide in determining whether respondent did or did not use its power as a carrier oppressively.

Haddock *v.* Delaware, Lackawanna & Western Railroad Company, 296.

11. FOREIGN AND DOMESTIC MERCHANDISE. IMPORT TRAFFIC.—With respect to that part of the carriage of such foreign merchandise between the ports of entry and the place of destination in the United States, the rule of the statute is that it is entitled to no preference in rates, charges, facilities afforded and treatment over domestic merchandise or other merchandise when these are a like kind of traffic transported from such ports of entry to such places of destination, but as to that service stands upon the same basis of equality with domestic merchandise or other freight as to rates, charges, facilities afforded and treatment, and must be carried upon this part of the journey under the inland tariffs of the carriers established for the transportation of domestic merchandise or other freights, and under the same rules governing their carriage, as to weight, bulk, value, expenses of carriage and all such other circum-

stances and conditions as enter into the making of just and reasonable rates and of avoiding unlawful prejudice and unjust discriminations, such as is provided by the statute.

New York Board of Trade and Transportation *et al. v.* Pennsylvania Railroad Company *et al.*, 447.

The circumstances and conditions surrounding the making of the rates upon such foreign merchandise in the foreign port of shipment have had their weight and operation in its foreign carriage to the port of entry and in the charges made and facilities afforded for that service, but after such foreign merchandise has been brought within the United States on its way to destination in the United States it encounters other circumstances and conditions that are controlling in this part of its carriage, namely, the laws of the United States made for the regulation of its rates and carriage.—*Ib.*

The term "a like kind of traffic," as it occurs in section 2 of the Act to regulate commerce, and as used in this report and opinion, does not mean traffic that is identical, but it means traffic that is of "a like kind" with other freight in the elements of a fair and just classification for the purpose of arriving at a just and reasonable rate and a rate that will avoid unjust discrimination and unlawful preference.—*Ib.*

12. REMOVAL OF BY CORRECTION OF UNREASONABLE RATES.—A railroad company carrying coal as interstate traffic is the owner of the capital stock of a coal company, which under its charter holds lands, mines, buys and sells coal, and ships over the lines of said railroad company. *Held*, where such conditions result in violations of the Act to regulate commerce, the only regulation practicable is the enforcement of the provision of the Act requiring rates to be reasonable.

Coxe Brothers & Company *v.* Lehigh Valley Railroad Company, 535.

13. CLASSIFICATION USED AS A DEVICE.—When classification is used as a device to effect unjust discrimination or as a means of violating other provisions of the statute, the Act requires the Commission to so revise and correct such classification and arrangement as to correct the abuse.—*Ib.*

14. CHARGES ON LIVE CATTLE SHIPPED IN PRIVATE STOCK CARS.

Shamberg *v.* Delaware, Lackawanna & Western Railroad Company *et al.*, 630.

15. REBATES TO CONSIGNEES OF LIVE STOCK. YARDAGE CHARGES.—*Ib.*

16. BASING AND LOCAL POINTS—CARRIERS NOT PARTIES TO THE PROCEEDING.—The rates on freight from interstate points to Kramer, Georgia, *via* the Chattanooga, Rome & Columbus Railroad, are made by taking the through rate to recognized "basing points" and adding thereto that local rate which will give the lowest combination. This method of determining a rate criticized, and, as applied to such traffic to Kramer, operates as an unjust discrimination against that locality.

Hamilton & Brown *v.* Chattanooga, Rome & Columbus Railroad Company *et al.*, 686.

All the carriers participating in the traffic, the rates for which were questioned in this proceeding, were not made parties, and the case, while showing that the through rates were discriminatory and unjust, failed to disclose sufficient facts upon which an accurate decision could be based, and accordingly it was held that the carriers who were parties to the proceeding be required to adjust their respective tariffs so as to avoid discrimination against Kramer, and that the carriers who were not parties be summoned to appear and show cause why a like order be not issued as to the business in which they participate, unless their tariffs are voluntarily adjusted so as to avoid the discrimination complained of.—*Ib.*

VALUE.

See TRAFFIC, 3.

VOLUME OF TRAFFIC.

Warner v. New York Central & Hudson River Railroad Company *et al.*, 32.

WATER AND PIPE LINES.

Rice v. Atchison, Topeka & Santa Fe Railroad Company *et al.*, 228.

WATER AND RAIL LINES.

Rice v. Atchison, Topeka and Santa Fe Railroad Company *et al.*, 228.
Capehart *et al.* v. Louisville & Nashville Railroad Company *et al.*, 265.
New York & Northern Railway Company v. New York & New England **Railroad Compa**ny *et al.*, 702.

WATER COMPETITION.

1. WHAT MAY BE CONSIDERED IN ESTIMATING THE DISSIMILARITY CREATED BY.
Lehmann, Higginson & Company v. Southern Pacific Company *et al.*, 1.

2. WHEN DISSIMILAR CIRCUMSTANCES AND CONDITIONS ARE NOT CREATED BY.
San Bernardino Board of Trade v. Atchison, Topeka & Santa Fe Railroad Company *et al.*, 104.
James & Mayer Buggy Company v. Cincinnati, New Orleans & Texas Pacific Railway Company *et al.*, 744.

3. WHEN DISSIMILAR CIRCUMSTANCES AND CONDITIONS ARE CREATED BY.
Lehmann, Higginson & Company v. Southern Pacific Company *et al.*, 1.
King & Company v. New York, New Haven & Hartford Railroad Company *et al.*, 251.

4. MORE OFTEN ENCOUNTERED ON LONG HAULS.
Poughkeepsie Iron Company v. New York Central & Hudson River Railroad Company *et al.*, 195.

5. CASES RETAINED FOR FURTHER SHOWING.
Rice v. Atchison, Topeka & Santa Fe Railroad Company *et al.*, 228.
Delaware State Grange etc. v. New York, Philadelphia & Norfolk Railroad Company *et al.*, 588.

6. WHAT IS NECESSARY TO JUSTIFY EXCEPTION UNDER FOURTH SECTION.
James & Mayer Buggy Company v. Cincinnati, New Orleans & Texas Pacific Railway Company *et al.*, 744.

See LONG AND SHORT HAUL CLAUSE.

WEIGHT.

See TRAFFIC, 3.

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See TRAFFIC, 6, 23.

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1. COMPULSORY ATTENDANCE.
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2. ATTENDANCE OF.
Haddock *v.* Delaware, Lackawanna & Western Railroad Company *et al.*, 295.
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3. DEPOSITIONS OF.
Amendment of Act, 758.
See PRACTICE.

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To CONSIGNEES OF CATTLE.
Shamberg *v.* Delaware, Lackawanna & Western Railroad Company, *et al.*, 630.
See PREFERENCE OR ADVANTAGE, 15.

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